

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

14-CV-1025 RB/SMV

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE CITY OF ALBUQUERQUE,

Defendant.

vs.

THE ALBUQUERQUE POLICE
OFFICERS' ASSOCIATION,

Intervenor.

PUBLIC HEARING
9:07 a.m.
May 10, 2017
Federal Courthouse
Albuquerque, New Mexico

BEFORE: JUDGE ROBERT C. BRACK

REPORTED BY: Deborah E. Trattel, NM CCR #153
TRATTEL COURT REPORTING & VIDEOGRAPHY
P.O. Box 36297
Albuquerque, New Mexico 87110

CERTIFIED
ORIGINAL TRANSCRIPT

Page 2

1 APPEARANCES

2

MONITORS:

3

Dr. Ginger

4

Ms. Laurie Owens

5

FOR THE CITY OF ALBUQUERQUE:

6

Ms. Espinoza

7

Assistant Chief Huntsman

City Attorney Ms. Hernandez

8

Judge Garcia

Police Chief Eden

9

Major Tyler

Mr. D'Amato, APOA

10

Ms. Jacobi

Mr. Willoughby

11

12 FOR THE GOVERNMENT:

13

Mr. Saucedo

Mr. Killibrew

14

Ferda

Mr. Sanders

15

Ms. Keegan

Mr. Ryals

16

Ms. Martinez

17

18

19

20

21

22

23

24

25

I N D E X

PAGE

PRESENTERS:

1		
2		
3		
4		
5	Dr. Ginger	7
6	Mr. Cubra	37
7	Mr. Simonson	51
8	Mr. Harness	63
9	Ms. Fine	70
10	Mr. Miera	73
11	Ms. Martinez	81
12	Mr. Saucedo	85
13		
14	MR. D'AMATO	107
15	MS. ESPINOZA	119
16	MR. EDEN	137
17	MS. HERNANDEZ	142
18	MS. JACOBI	167
19	MS. HERNANDEZ	168
20	DR. GINGER	170
21	MS. BAUTISTA	175
22		
23	CERTIFICATE OF REPOTER	183-184
24		
25		

Page 4

1 THE COURT: This is United States of America
2 vs. the City of Albuquerque. We're here for the
3 Monitor's fifth report today. Let me begin by
4 announcing appearances.

5 Dr. Ginger and Ms. Owens; is that correct?

6 MS. OWENS: Yes.

7 THE COURT: Are in the jury box, the Monitor.
8 Ms. Espinoza, the Communication Director for the city is
9 here. Assistant Chief Huntsman, Ms. Hernandez, Judge
10 Garcia, Chief Eden, Major Tyler, Mr. D'Amato is -- there
11 he is. Ms. Jacobi. And I'm not sure who the gentleman
12 there is.

13 MR. WILLOUGHBY: Shaun Willoughby, Albuquerque
14 Police Officers Association.

15 THE COURT: And for the government,
16 Mr. Saucedo, Mr. Killibrew, Mr. Sanders, Ms. Keegan,
17 Mr. Ryals, Ms. Martinez, and I can't read Diana's
18 handwriting. The lady at the back, the table there.

19 Thanks everyone for being here. Sorry we're a
20 little more cramped than usual when we're over at Gold
21 Street. That courtroom wasn't available. We'll just
22 make due.

23 So we're here for the Monitor's fifth report,
24 as I said. Let me kind of lay out for you what the day
25 looks like. We're going to hear from Dr. Ginger to

1 begin. And at that point, when he concludes, we're
2 going to break with prior process and hear from the
3 Amici at that point. We're trying this out a little
4 differently than we've done in the past. I think I'm
5 going to ask that the Amici try to keep their comments
6 to about 15 minutes. That's our goal this morning.

7 At that point, we'll hear from the government,
8 with Ms. Martinez and Mr. Saucedo taking the lead, I
9 think. And then, in sequence, we'll hear from the APOA.
10 The City of Albuquerque will then comment, and then
11 Dr. Ginger will close the day with response to the
12 parties' comments.

13 We are getting a little bit of a late start
14 this morning. We had some technological issues, and
15 that screen was put up for the benefit of the gallery so
16 that everyone could see the PowerPoint presentations
17 that are going to be done this morning. But it's a
18 visual block for some of you, to see some of the players
19 and to see me. I assume there are people sitting behind
20 that screen. I'm sorry. There's a little give and take
21 there.

22 And you're free to move about, if you like, to
23 follow all the action. So we will go until about 10:20
24 this morning. At that point, we'll take a 20-minute
25 break. We'll work until noon and then we'll reconvene

Page 6

1 at 1:15. We'll have a 20-minute break somewhere
2 mid-afternoon. We will finish sooner if possible, but
3 no later than 4:30 this afternoon. So that's what the
4 day looks like.

5 Dr. Ginger, glad to hear from you.

6 DR. GINGER: Thank you, your Honor.

7 MS. MARTINEZ: Your Honor, as a housekeeping
8 matter while Dr. Ginger is coming up, I have requested
9 that Dr. Ginger and the city provide their PowerPoint to
10 us so that we can make sure that those are made
11 available to the community. So for those that are not
12 able to get a good look through the screen, we will make
13 sure we post those two presentations and make them
14 available that way to the community.

15 THE COURT: Any objection to that process?
16 Have we got copies of the PowerPoints available?

17 MS. HERNANDEZ: No objection to that, your
18 Honor, and we will make them available.

19 THE COURT: Sure. Thanks. Dr. Ginger, let me
20 just make the record that I have -- I have scanned, with
21 great interest, the fifth report. I have not read it
22 all word for word. I'm just being candid. But I have
23 been through all of it. And I have also read all of the
24 Amici letters and generally brought myself back up to
25 speed, as required.

1 Diana reminds me that I didn't acknowledge the
2 presence this morning of the Amici. Let me do that.
3 Sorry to borrow your time. From APD Forward,
4 Mr. Simonson and Ms. Koenigsberg. There they are.
5 Thank you. Mr. Cubra from the McClendon subclass.

6 MR. CUBRA: Good morning, Judge.

7 THE COURT: Good morning. From CPOA and the
8 Police Oversight Board, Ms. Fine and Mr. Harness. Thank
9 you all for being here.

10 And Mr. Miera from the MHRAC. There he is.
11 Thank you for your -- well, not just for being here this
12 morning, but for your participation in this process, in
13 all of your effort.

14 Now, Dr. Ginger, please.

15 DR. GINGER: Thank you, your Honor. Given the
16 nature of the fifth report, I've changed up my process a
17 bit as well. Usually my reports appear narrative. The
18 fifth report is a data-intensive report, so we've gone
19 to PowerPoint, hopefully to aid folks in understanding
20 what it is that's actually happening, and where we stand
21 on the trail to compliance.

22 The graph that probably everybody has seen, I
23 think it was even in the paper, is a graph of long-term
24 compliance since Day 1 with this project all the way
25 from the end of IMR-5. The dark-colored orange bar is

Page 8

1 primary compliance, the next lightest bar is secondary
2 compliance, and the lightest bar is operational. Excuse
3 me. So you get a good thumbnail sketch of where we
4 stand in the compliance effort.

5 Just to review, that's reasonably decent
6 process on policy. We've started moving things through.
7 We have some tougher policies coming up for the
8 six-month review period, but we shall get through those
9 and -- APD is in pretty decent shape on their policy
10 situation.

11 Secondary usually relates to training or
12 on-the-job training or coaching, the sorts of things
13 that an agency will do to make sure that people know
14 what's expected of them and are able to fulfill those
15 duties.

16 And then primary -- I'm sorry, operational is
17 -- it's part of the day-to-day business routine of the
18 police agency, that it virtually runs on itself or by
19 itself without outside assessment and comment. And that
20 means that APD will continue, to the extent necessary
21 and proper, to implement the reforms.

22 That's just so everyone can understand where we
23 are when we talk about these things. This is the same
24 slide in data format. The most critical piece of the
25 CASA is the use of force component and it's up -- as up

1 first. Let me explain our methodology, first of all, so
2 that everyone can understand how we got to these
3 numbers.

4 We selected a sample of 16 use-of-force cases.
5 The complete case, not just the officer's report, not
6 just the arrest report, but the complete case, including
7 video and any other supporting documentation. And we
8 reviewed each of those for compliance with the
9 requirements of the CASA.

10 The first piece up is the use of force piece,
11 and pieces that we're looking at are advisement before
12 use of force, where possible. It's not always possible.
13 Sometimes it just has to happen. But that asks for the
14 police officer to give directions that indicate that,
15 you know, if you don't calm down, if you don't start
16 listening to what we have to say, we're going to have to
17 physically put hands on you. And that's required by the
18 CASA.

19 Second is deescalation, which is a well known
20 20 years back, I guess almost, process that police
21 officers can, if they have the time available, use to
22 calm the situation down, slow the pace of events, and
23 try to give the suspect or the arrestee time to
24 understand his situation, process it and comply.

25 The third piece is to allow, where time

Page 10

1 permits, allow the suspect to submit. It means -- it
2 may be even just a small break and all of a sudden
3 you're met by some resistance. But where time is
4 available, that should happen.

5 We looked at neck holds, leg sweeps, arm bars,
6 force against handcuffed persons in custody, lawful
7 commands prior to use of force: Stop resisting, turn
8 around, put your hands behind your back, those sorts of
9 things; pointing a firearm; and then inspecting the
10 suspect or arrestee for injuries after the arrest has
11 been made.

12 Now, the numbers that you see in the right-hand
13 column are the compliance levels that we found in those
14 16 cases, 16 use-of-force cases that we sampled. So for
15 example, just to help folks read the chart, 81 percent
16 of the time, there was an advisement before use of
17 arrest. That's a good, high solid number, 81 percent.
18 It's not 95 percent, which is what we need to see, but
19 it's still a good number.

20 So we took a beat and tried to let the suspect
21 understand he's going to be arrested, there's no sense
22 in making it difficult to do. So 81 percent of the
23 time.

24 93 percent of the time, which is also a really
25 good solid number, there was a deescalation involved.

1 The officer would try to talk down the suspect, would
2 try to take that one or two beat moment to let the
3 suspect get his head square, know where he's going,
4 realize what was happening and not resist.

5 Allowed to submit. In other words, we don't
6 just swoop in, apply force immediately unless it's
7 tactically necessary. 88 as well. Pretty good numbers;
8 still not in compliance. There were no neck holds this
9 period. That's a very positive thing.

10 The policy was followed a hundred percent of
11 the time regarding leg sweeps and arm bars. So
12 obviously that's compliant and a stellar performance on
13 the part of APD.

14 Use of force against handcuffed persons in
15 custody: 64 percent of the time it was done right,
16 which is a reasonable number, but it shows APD there's
17 work that needs to be done. Lawful commands prior to
18 the use of force, a hundred percent of the time, which
19 is more than a good number, it's excellent.

20 Pointing a firearm: We found no instances
21 where a firearm was brandished in the 16 cases that we
22 looked at; no incidences where a firearm was brandished
23 or pointed at a suspect in order to get him to surrender
24 or her to surrender. And then inspections after arrest
25 for injury, critical piece, 100 percent, good solid

Page 12

1 number.

2 So you can look at that chart and you can see
3 where APD is doing well, and they are, and you can see
4 where they're doing poorly. And it's a really good aid
5 to see where we're headed, where we are, where we're
6 headed in this process.

7 Take a look at self-reporting use of force.

8 The policy requires an officer who uses use of force to
9 report it to his superiors. The question is, did we do
10 it or did we not. 81 percent of the time -- yes, sir.

11 THE COURT: Excuse me. Does this slide and the
12 following slides relate to the 3 of 16 notation?

13 DR. GINGER: Yes, all of these first of
14 introductory slides are the use of force, the 16 cases.

15 THE COURT: You're going to get back to the
16 complete failure of the 3 to 16, you're going to get
17 back to that?

18 DR. GINGER: Yes, sir, eventually. I can pick
19 the pace up if the Court prefers.

20 THE COURT: I'm fine. Just trying to follow.

21 DR. GINGER: I just wanted to try to highlight
22 the fact that it's not that they've ignored what they've
23 been asked to do, it's just they're falling short. We
24 do have some issues, but for the most part, APD has
25 tried to implement the policies and practices that are

1 dictated by the creed.

2 The question is how effective are they. They
3 need to get to 95 percent. We're at 81 percent of the
4 primary officers who use force actually report it. Now,
5 that's a fairly -- that's almost a 20 percent failure
6 rate. That's fairly significant.

7 And 75 percent of officers who witness other
8 officers use force report it as a use of force. So
9 those numbers are relatively low for the place we are in
10 this process at this point in time, and we'd like to see
11 them go up.

12 Next up is accurately reporting use of force.
13 That's a paragraph number in parentheses. You can see
14 if you look down, look down the table, the percent in
15 compliance. For example, the report includes a reason
16 for the initial police presence. Officers received a
17 call to such-and-such an address regarding a breaking
18 and entry. That's what's asked for there.

19 That's in there a hundred percent of the time.
20 Describing and justifying use of force, however, is in
21 there 69 percent of the time. That's still over
22 two-thirds, but it's an area where APD needs to improve.
23 I guess the next one we would want to talk about would
24 be the -- where did it go?

25 Here it is. Narratives free of a boilerplate.

Page 14

1 Boilerplate to us is it's sort of the same narrative,
2 almost a limerick narrative every time that you read a
3 report. And what these reports need to do is to be
4 specifically addressed to the nature of the call for
5 service, the nature of the resistance, and the nature of
6 force applied, as opposed to cutting and pasting from
7 old reports and that sort of thing.

8 So 75 percent of the time they did fine, the
9 other 25 percent, they need work. So basically anything
10 in this column that doesn't say 95, there's work yet to
11 be done. Most of that should have been caught by
12 supervisors before we caught it and a large chunk of
13 that wasn't. So had the supervisors caught it, we would
14 have counted it as a right. But since they didn't, it's
15 an error.

16 So I guess the best thing to do is for APD to
17 police itself, beat us to the punch on these things and
18 make sure that the supervisors are doing their jobs, and
19 that the command and the mid-managers are doing theirs.

20 I'll take each one of those slides in a smaller
21 chunk at this point and give you some information about
22 what we found. The accurately reported use of force 12
23 out of 16 times. We had 16 cases, 16 uses of force. It
24 was accurately reported, accurately reported 12 of those
25 times. So we missed 4. Again, 76 percent, it's not

1 horrible, but it needs to come up.

2 They failed to report 4 of 16 noted injuries
3 based on our review of those 16 cases. That's
4 problematic. It needs to be a hundred percent. That's
5 the goal, for obvious reasons. There are civil
6 liability issues, health issues. That's an important
7 oversight.

8 We have a 25 percent error rate in reporting.
9 In other words, we saw things that happened in the
10 officer's use of force process of reviewing OBRDs, body
11 cams, that wasn't reported in the report. And that's
12 one of the things that we're working with APD right now,
13 is to try to punch up its supervisory presence in the
14 reporting area. And comparing video to what's in the
15 report, that's got to be step one. And until we can get
16 that done, we're going to continue to have problems.

17 Unfortunately, 4 of those got through. None of
18 those were caught by lieutenants or commanders at the
19 command area station review level. So that's an issue
20 for us, because it shows problems in that review process
21 at the supervisory level.

22 Next up is on-body camera activations. The
23 requirement is under certain circumstances, all officers
24 have to activate their camera. Our review was to see if
25 that's what's happening during use-of-force events that

Page 16

1 were reviewed by us using body cam video, and officers'
2 reports after the fact.

3 There were 3 of 16 case -- I'm sorry, there
4 were 4 cases -- there's an error my fault -- 4 of 16
5 cases that that did not happen. And again, it was a
6 hundred percent error rate at the mid-management
7 lieutenant and the command level, where we would find
8 things that had not been noted and placed in the file by
9 command staff, which they are supposed to be reviewing
10 these use-of-force reports. That's concerning to the
11 monitoring team. I'm sure it's concerning to APD and to
12 the Court as well.

13 This next piece I think, as the old saying
14 goes, in the opinion of the Monitor, which is where the
15 rubber meets the road at this point in the process, and
16 that's supervisory review and investigation of officer
17 use of force. If we can fix this, we can fix a huge
18 chunk.

19 And I'd like to remind the Court, we sampled 16
20 cases, we found 4 to be problematic in multiple areas.
21 So it's not like this is intentional, but what it is
22 a failure of supervision and management to find it and
23 correct it. And until we can get that done, we're not
24 going to go anywhere, we're going to be back in the
25 Court every six months making presentations.

1 So to me, this is the piece that's most
2 critical. And we've had conversations with APD since
3 day one about the necessary focus on supervisory
4 process. Again, we studied 16 events. We found 2 of
5 those 16 events that were handled properly all the way
6 through. So 2 out of 16, a hundred percent.

7 The sergeants did what they did, they noted
8 things that the officer may have left out of his or her
9 report; the lieutenant did what he or she was supposed
10 to do; if the sergeant missed something, the lieutenant
11 called him on it; and the command staff did the same
12 thing.

13 We saw that in two places, so that means
14 they're doing it. All we need to do is grow it and make
15 sure they're doing it everywhere. I thought that was a
16 good finding. I mean, the raw numbers are not good, but
17 there is process in place, and there are supervisors and
18 lieutenants reviewing use of-force reports the way they
19 are expected to do it.

20 Another requirement is random and directed
21 audits. And in my experience as a Monitor, and in my
22 experience as a police officer, that's the best way to
23 change practice, is to have something in place that gets
24 command level personnel, supervisory level personnel
25 involved in what's going on in the field, and taking a

Page 18

1 look at video, reading police reports, and going, "Wait
2 a minute, that's not what the policy says. So here I've
3 got a problem. How am I going to deal with Officer
4 Ginger because he made this mistake?"

5 There's a whole level of things they can do.
6 We don't want to dictate to them what they have to do.
7 This is their police department. If they think a verbal
8 warning on a relatively innocuous error is enough, so be
9 it, we won't question that. If it's a very serious
10 transgression, a verbal warning probably won't make it,
11 but you know, if it's rationalized and the management
12 reports about why we did X instead of Y, we read those
13 and we listen to what they have to say, because as we
14 say, it is their shop.

15 The problem is, we didn't see any evidence of
16 random directed audits. Now, we saw supervisors take a
17 look at reports and catch things, but from an overall
18 standpoint, we found, in effect, no -- none is a bad
19 statement. We found ineffective review of use of force
20 from an audit standpoint, which is getting, on the left-
21 hand side of the sheet, the list of all the things that
22 needs to be done at a certain type of a use-of-force
23 incident, and on the right side of the sheet, a space
24 for a narrative that says completed, not completed, and
25 why you think it's not completed, so that those can be

1 kicked upstairs to train.

2 Because that's the next step. If we're not
3 doing what we need to do in the field, even though we've
4 already had training -- and they have -- if we're not
5 doing what they're doing in the field, if we continue to
6 see a wide range of officers making the same mistake,
7 that calls for retraining.

8 So it may be just a three-hour course on
9 handcuffing, or notice, or whatever it might be. But
10 that's a critical piece. And we haven't found anything
11 in the record that that's happening yet. I understand
12 it's under development. And we encourage APD to push
13 forward with that.

14 Excuse me, your Honor. APD should be engaging
15 in a system of random and directed audits. I tend to
16 prefer random, because it tends to come through every
17 time. But it's their shop, they need to do it the way
18 they want. They could do both. They could do only
19 random, or they could do more routinized about it. But
20 at this time, there's some serious difficulties with
21 those audit processes.

22 If you've read the report, you know we found
23 substantial difficulties with those 16 use-of-force
24 cases. The problem, as we see it at APD at this point
25 is that that disconnect is not being followed up the

Page 20

1 chain of command, so that the area commander understands
2 wow, I had X instances of officers that were using force
3 against handcuffed individuals. This is hypothetical.
4 Not making any claims, just as an example.

5 Can I do a video? Can I get the use of force
6 sergeant to come out to the area command and do a
7 two-hour course? What can I do? Looking for patterns
8 is job one for management.

9 And we have a substantial number of automated
10 information systems that are either in place or being
11 put in place to help them with that. And when those
12 come online that might improve their performance, but at
13 this stage, it's certainly suboptimal.

14 The CASA articulates three different types of
15 audit processes APD should be engaged in. We found in
16 the written record that we reviewed, we found no
17 evidence that that was happening, and I think it's an
18 important next step. If it's not being planned already,
19 it probably should.

20 I'd like to move, if I can, your Honor, from
21 sergeant level to lieutenant and command level. Those
22 are the folks that basically run the area stations.
23 Command oversight requires commanders and lieutenants to
24 review and document errors in use of force in the field,
25 and for the cases of commanders to do exactly the same

1 thing for their sergeants who may have missed something
2 that the commander caught.

3 So there's a multiple tier, or should be a
4 multiple tier level of review. And if APD falls short
5 anywhere, it falls short here. And quite frankly, the
6 numbers we saw were really concerning. But I'll caution
7 everybody to remember those were 16 cases. Some of
8 those cases were that thick, so there's a lot of good
9 information in them, and we feel it's better -- it's
10 better for APD, for us to mine that data as carefully as
11 possible, so that as early as possible, we can catch
12 events that are preventable, or that we can train out of
13 the system, or that we can supervise out of the system,
14 or that we can discipline out of the system.

15 So I think that's the next great spot for APD
16 to focus, is to get their sergeants in the right
17 mindset, with the right tools, to get their command
18 level entities to the point that they need to know, or
19 that they know they know what they need to look at when
20 they read a sergeant's investigation of use of force,
21 and the types of things they need to keep close track
22 on.

23 One of the things we've noted in this report
24 that is really concerning to us, the entire monitoring
25 team, is that the disconnect between what we expect of

Page 22

1 our lieutenants and our commanders seems to be
2 remarkably high at this point in time. A lot of the
3 failures that we note in this report sit at that level,
4 and those are the two most critical levels.

5 Anyone who's ever worked a police department
6 knows that the fellow who decides, or the woman who
7 decides what days off you can take off your overtime is
8 your sergeant. You've got to have those guys involved.
9 Next up are the lieutenants and the commanders who need
10 to be sure that the sergeants are supposed to be doing
11 what they are supposed to be doing. We found some
12 pretty substantial shortcuts there.

13 We found that to be effective, that command
14 level review to be effective 6 percent of the time. In
15 other words, they do catch stuff, but it's not pervasive
16 yet. So what we need to do is figure out what those --
17 it may be one commander, from the look of the numbers,
18 but what that one commander knows and does that
19 everybody else needs to be doing, use him or her as an
20 example and get that pushed down into deeper levels of
21 the department.

22 Failure rate on taking corrective action on the
23 cases that we looked at, at the command level, between
24 the time the case was processed and the time we looked
25 at the records, the failure rate was 19 percent, with 81

1 percent compliance. I don't mean to say that APD is
2 purposefully not doing its job. That's not my point at
3 all. But we have a failure rate that's, in some cases,
4 remarkably high.

5 We need to figure out what causes it. We need
6 to figure out if it's a training issue, if it's a
7 commitment issue, if it's an ability issue, and we need
8 to get that fixed. That would be job one, from my
9 perspective.

10 But 19 percent of the time at command level
11 really concerns me. It concerns me a great deal. Talk
12 now about another piece of the oversight process, and
13 that's the Force Review Board. We have reviewed dozens
14 of cases that go through FRB to make sure that they're
15 doing what the CASA specifies them to do.

16 We're looking for the following things:
17 Complete, timely and accurate reporting and decision
18 making on use of force; ordering further investigations
19 when it's appropriate; using an appropriate standard of
20 evidence. For us, it's preponderance of the evidence.
21 We don't need to have enough evidence to convict people,
22 we need to have a reasonable certainty that something is
23 afoot and needs to be fixed.

24 I think the FRB needs to make absolutely
25 certain that it forwards notice to the chief when they

Page 24

1 find anything related to use of force that is not in
2 compliance with the policy, so that the chief has, to
3 the extent possible, day to day touch with what is it in
4 use of force that we need to be driving home to our
5 commanders, our lieutenants, our sergeants and our
6 patrol officers. What is it?

7 And the Force Review Board is ideally designed
8 to do that. We will have some comments about success
9 rates a little bit later. And then finally identifying
10 training issues, policy issues, equipment issues,
11 tactical concerns and other things that are more
12 organizational-wide as opposed to officer-wide and
13 making sure that that information gets out to the
14 various command levels and the upper management
15 structure of the police department so that they know
16 they have a picture.

17 We had 16 cases. Out of those 16 cases, 12 of
18 them failed. What's the most prominent failure reason?
19 All right. Here it is. How can we fix it? Well, we
20 could retrain everybody; we could put out a special
21 order. You know, there are a whole host of different
22 things that can be done, but you have to know it's an
23 issue first. And that's what Force Review Board, I
24 think, is best suited for.

25 So, you know, the whole list of the things they

1 need to look at for each one of these incidences is at
2 the very bottom of that slide, of the next slide, I'm
3 sorry. My bad. Identify training, policy, equipment,
4 tactical concerns and refer them for remedial action.

5 Now, sometimes that referral has to be
6 upstairs. I mean, but it's a chief's executive suite
7 issue. It's not really a command issue. It may involve
8 budget, it may involve staffing, it may involve any
9 number of things that an area commander can't fix. But
10 in a lot of cases, it will involve things an area
11 commander and a few good sergeants can fix. If we're
12 going to go anywhere, that's where we need to go with
13 the Force Review Board.

14 Requirements in the CASA for Force Review Board
15 are as follows: Document findings of receipt of
16 investigations within 15 days. In other words, we got
17 it, we know what it's about, we know what the complaint
18 is, and we've received it. It's in the hopper to be
19 processed.

20 What we found with the Force Review Board. The
21 next five statements. They complied with all the
22 requirements of the CASA 25 percent of the time. That's
23 remarkably low for an administrative oversight board.

24 Now let me say, having said that, it's still a
25 relatively new process, it's not been there very long,

Page 26

1 and I think the folks that run that board, the folks
2 that appear on that board are still sort of feeling
3 their way.

4 So it would behoove APD, if they haven't done
5 so already, to talk with other agencies who have been
6 through similar processes: New Orleans, Seattle, folks
7 who are a little bit ahead of where they are because
8 they have been working longer. Find out how they do
9 this. The way they do it in New Orleans, not all that
10 great, but the way they do it in Seattle is if you could
11 just tweak and change a few things, we'd be doing a fine
12 job.

13 But overall, 25 percent compliance rate for a
14 Force Review Board process concerns us, concerns us a
15 great deal.

16 Sample completed investigations, we found that
17 effective 33 percent of the time. Ordering more
18 investigation when needed. Again, 33 percent of the
19 time success rate. Using the preponderance of the
20 evidence standard. That's a law enforcement staple for
21 30 years. Preponderance of the evidence is a standard
22 that needs to be used. And yet, we find a 50 percent
23 rate there. It's concerning.

24 And in referring violations to the chief. We
25 also find the Force Review Board should be making

1 recommendations if there is a need for new equipment, a
2 need for new training, or if there are tactical issues
3 that come to fore -- come to the fore during their
4 investigations.

5 This is sort of the quality control mechanism.
6 It was designed to be the quality control mechanism for
7 APD. We're two years in, almost exactly two years in,
8 and we're at 25 percent on that. So it's concerning.

9 Document your findings in a written report; 25
10 percent effective. We found some critical issues with
11 Force Review Board. We'll get into those in a second.
12 But if they don't document their findings and push it up
13 to the chief so that it can be analyzed and pushed back
14 down, for example, to training, or to the area
15 commanders, if that's where the problem needs to be
16 fixed, we're just in a circle. You will never fix
17 anything.

18 So what needs to be done is when you start
19 seeing these data, you need to find out where are our
20 problems. Our problems are in these 15 areas. In those
21 15 areas, which ones are the top three. Those three
22 right there. How do we fix it? Try to fix it, run it
23 for six months. Does it work? Great. It's fixed.
24 Rates are down. What's the next three?

25 Eventually, you get to where you're in really

Page 28

1 decent shape on all your compliance issues. So overall
2 compliance at Force Review Board stood at 34 percent.
3 We'll round it up. 33.5.

4 Take a look at the actual work of the Force
5 Review Board. We reviewed seven cases that were
6 processed by the Force Review Board in 2016 and 2017.
7 The average time to complete was 34 weeks. And that's
8 way too long.

9 Now, it's a new board. We have to understand
10 that. But 34 weeks is a long, long time to have
11 information on what might be a critical incident that
12 hasn't been assessed yet. Two of the events took 12
13 months to resolve and get out. One was completed in
14 four months, which is a lot closer to something we would
15 consider timely.

16 One of the things that -- and we'll deal with
17 APD on this in June when we come back for the next site
18 visit. We saw a lot of members of the Force Review
19 Board, as many as a dozen of them, use a decision not to
20 comment on what they had reviewed. And we don't know
21 why that is. We don't know why that is. We're going to
22 find out.

23 But if you were running that Force Review
24 Board, that would be of grave concern to me.

25 Particularly if it turned out the things that they

1 weren't commenting on turned out to be problematic. If
2 they're not commenting because they don't feel they have
3 the skills to do so, that's one thing. So you either
4 train them up or you can replace them.

5 But if there's an event that obviously is
6 problematic, and they're declining to comment on it,
7 that's a grave concern to the monitoring team. Probably
8 some of the most important stuff they'll have to work
9 through.

10 Enough said on that, I think. I'm going to
11 shift gears a little bit and give the Court an
12 assessment of the overall quality of the entire
13 oversight system. We'll choose to do that with numbers
14 from those same 16 cases that we talked about, the
15 use-of-force cases that we went completely through and
16 analyzed from point 1 to point 82, to make sure that
17 they were handled properly.

18 Let's see if I can -- that's in the report. I
19 don't think it is in here. Hang on one second. I'm
20 sorry. If you want to know where these data came from,
21 it's Table 4.7.191 in the Monitor's -- this Monitor's
22 report. And the finding is 87 percent of the time the
23 system fails. Now, that, to me, is a shocking number.
24 You know, we're two years in and we still have an 87
25 percent failure rate.

Page 30

1 It's concerning, but it's fixable. It's
2 fixable by all those things we just talked about. It's
3 fixable by the recommendations that we just made in this
4 last Monitor's report. It's fixable by permanent,
5 focused, critical oversight of use of force.

6 And I mean, that should come from different
7 levels. It should come from the supervisory level, it
8 should come from the management level, it should come
9 from the executive management level, and it should come
10 from the Force Review Board.

11 When we get to the point that the Force Review
12 Board is putting out reports that talk about trends and
13 use of force that are problematic to the command
14 structure, and those are then read by lieutenants and
15 sergeants, and there's something done in the field,
16 that's when we started making progress.

17 You know, we can write reports all day long.
18 APD can do studies all day long. Until that information
19 gets down into the sergeants' pockets, we're not going
20 to go anywhere, and that's the critical piece of this.

21 I mentioned earlier 2 of those 16 cases passed
22 muster a hundred percent, at least 95 percent. There
23 may be an odd error or two, but they were well done. 8
24 of the 16, or actually it's 14, because 2 of them were
25 okay, were 33 percent effective. One 66 percent

1 effective. And we already talked about the 2 that were
2 95 percent or higher effective.

3 But that's a substantial failure rate, in my
4 mind, for an agency that has a board in place to answer
5 these questions. And you know, if you were asked for a
6 reason for it, it goes back to that decline to vote
7 process. A lot of these cases, the FRB produces to us
8 and we review are -- many of the cases that they produce
9 to us and we review are pretty clear and convincing
10 evidence that there's retraining that needs to be done,
11 or there's supervision that needs to be done, or there's
12 discipline that needs to be taken. And it concerns us.
13 We'll track that down, we'll find out what's going on.
14 That's on our agenda for the next site visit.

15 The final note on Force Review Board is that it
16 seems to be even less effective oversight in mid and
17 upper management level support review and comment than
18 we would have ever expected. And it's new. I give APD
19 that. I understand that. It's a cumbersome process. I
20 understand that as well. But that doesn't mean that
21 they don't need to get results.

22 So I think the Force Review Board and the Force
23 Oversight System is the place where they need to be
24 spending their time in training, supervision, management
25 and command. And if they can, you know, a hundred

Page 32

1 percent, 88.9 percent, whatever it takes, but it's got
2 to be the big piece. I think we'll start to see some
3 progress. And we have seen progress. I don't mean to
4 intimate that we haven't. I'm surprised that we're at
5 this stage at this part of the game, but that doesn't
6 mean we can't accelerate.

7 Just to give you a little bit of an idea about
8 why the monitoring team is so concerned, these are the
9 different levels of review at APD, and their
10 effectiveness rates are the last column, second column.
11 So you can see, we have problems in supervision,
12 command, executives and systems.

13 For example, the EIRS system was shut down for
14 a long period of time without the Monitor even knowing
15 about it. That's a systems issue. It's critical. I
16 know APD has reasons for it, but you know, nobody
17 bothered to talk with the monitoring team to say, "Hey,
18 we're having these issues, what do you think we should
19 do with it?"

20 I would have felt a lot better about it if it
21 hadn't just been shut down. But in any event, my
22 systems levels, that's what I'm talking about, the
23 routine review of OBRD's, the routine review of EIRS
24 systems triggers that sort of thing. Obviously, there's
25 great room for improvement there.

1 Now, just so it's not all darkness and gloom,
2 we noticed a lot of things that APD is doing well. And
3 by the way, those are in the report. As I said, when I
4 interviewed for this job, if I see a mistake, I'll call
5 it a mistake. If I see a success, I'll call it a
6 success. These are they.

7 If you look at this, it's significant amount of
8 work. I don't mean to intimate or suggest, by any
9 stretch of the imagination, that APD has been not
10 diligent. There's a lot of work that went into this
11 stuff. It's done, it's reasonably well done, and it's
12 working reasonably well.

13 What we haven't done is tackle use of force
14 yet, and as the Court knows, that's the main reason
15 we're here, is use of force. They reduced their span of
16 control for sergeants to 8 to 1. At one time it was up
17 in some cases over 12 to 1, depending on who got sick.
18 So that's a substantial achievement. And I know it
19 wasn't easy. It's hard to grow a sergeant.

20 They have excellent -- they could use it as
21 state of the art for the field -- electronic control
22 weapons, policies, training and procedures. Absolutely.
23 Some of the best we've ever seen. So another kudo to
24 APD.

25 The Behavioral Sciences Unit has been engaged

Page 34

1 almost from day one. They have some new personnel on
2 over there who are doing a crackerjack job. That's
3 another bright spot for APD. MHRAC is hitting its
4 stride. There's still work to be done there in terms of
5 getting unfiltered information to APD through MHRAC and
6 getting APD to assess it, understand it, deal with it,
7 work with it. But that's a success. It's working.
8 There is give and take going back and forth.

9 I think it's just going to be a matter of time
10 until that -- that's another one of the really bright
11 shining star of this process, is MHRAC. The Crisis
12 Intervention Unit has developed a scenario in case-based
13 training modality that, again, is probably one of the
14 best I've seen in the country. So kudos to APD for
15 that. Really a nice job on it. Particularly what we
16 had to worry with before, which I -- hopefully this new
17 process will clear up.

18 COAST and CIU are integrating regular contact
19 with individuals known to need help with an aggressive
20 campaign to get them to at least think about going to
21 get that help. So that's another bright spot.

22 Policy development and process is -- there are
23 some cases where it's done extremely well; some cases
24 when it's very problematic; and right now all of the
25 easy stuff is done. The low hanging free fruit is done,

1 it's been picked, it's been harvested. It has been
2 chopped up into little pieces and marketed. But the
3 critical stuff, the use of force, multiple repetitive
4 violations of the same policy by a given officer, or set
5 of officers, those things have lagged behind.

6 And I mentioned it in the report. We're
7 getting significant push back on some policies, use of
8 force, on body recording devices and the early
9 intervention systems. Those are up. We have a new
10 policy to the Monitor up for review right now on use of
11 force. And we have one on EIRS as well. And OBRD is on
12 the way.

13 So those will be coming back. Most of those
14 are in resolution mode, which basically means I've got
15 to put the language in there that I'll live with. We
16 should be able to move forward with that.

17 Training is another bright spot for APD. We've
18 spent -- as a team, we've spent a substantial amount of
19 time out there, and I think if you read the last couple
20 of reports, you know that we value that training
21 process. The ability for those folks to do what they do
22 with the resources they have is good. It's really a
23 good process.

24 Now, we have training issues. For example, use
25 of force, for example, on body recording devices, for

Page 36

1 example, ERIS. But the training that goes into basic,
2 the training that goes into lateral injury, the training
3 that goes into OJT, the standard routine daily, or
4 monthly, or weekly, or whatever it is training,
5 reasonably well done, reasonably well presented, and I
6 think we're starting to see results in the field.

7 One videotape -- I can't remember, I apologize,
8 your Honor, but I can't remember if it was this
9 reporting period or the previous, we came upon evidence
10 of two officers talking about what should have been
11 done, and it just happened to get caught. But it was a
12 good example. Well, you know, we could have, maybe we
13 should have.

14 And we encourage that kind of kind of thought
15 at the Academy. I think that's where that came from. I
16 think they trained it. So that's a bright spot out
17 there. I think it was a good system.

18 And the technical systems in Internal Affairs
19 are up and running reasonably well. We're getting
20 access to our data fairly and efficiently. Most of the
21 stuff that should be in it is in it. So the technical
22 systems are there.

23 Where we're falling down is on the hard work,
24 which is looking somebody in the eye and saying, "I
25 don't like what you did here because it was wrong for

1 these three reasons. Get up to speed."

2 It's difficult, nobody likes to do it, but
3 unfortunately, it's a job that has to be done at APD or
4 we're not going to make the changes that we need.

5 That's all I have, your Honor, unless you have
6 questions.

7 THE COURT: I have some. I'll save them,
8 actually. So thank you. Thanks very much.

9 DR. GINGER: Yes, sir.

10 THE COURT: I've misplaced my agenda. Who's up
11 on the Amici? There we go. Thank you. Mr. Cubra, I
12 think you're first up. As Mr. Cubra approaches the
13 podium, I'd ask that the city take good notes as we're
14 hearing from the Amici, because as I've read the
15 letters, I know that they have several specific concerns
16 and at some point, I'm going to ask the city to respond
17 to those concerns individually, and give me some sort of
18 written report and action plan over the next 30 days.

19 So please follow along.

20 Mr. Cubra?

21 MR. CUBRA: Thank you very much, Judge, as
22 always. I really appreciate you making this opportunity
23 for me to speak on behalf of my clients. Excuse me. To
24 remind you, there are roughly 8,000 individuals who get
25 arrested by the Albuquerque Police Department and booked

Page 38

1 into our jail annually who have mental or developmental
2 disabilities. Those are the people I represent in the
3 McClendon case.

4 And with respect to the McClendon case, I just
5 wanted to quickly say that I told you in the past that
6 we had a pending motion against the city with respect to
7 several matters. And we have happily reached a
8 settlement agreement, Judge. It is subject to
9 presentation to Judge Parker for preliminary approval,
10 then a fairness hearing, because it's a class action,
11 and then ultimately, we hope that the Court will approve
12 that settlement agreement. And I'll just say that
13 there's one particularly important piece that is
14 hopefully going to make your job easier here.

15 The city is agreeing that they will, going
16 forward over the next year or so, collaborate in good
17 faith with the city -- excuse me, with the County of
18 Bernalillo, to improve and increase behavioral health
19 services that hopefully will reduce the numbers of
20 encounters between law enforcement and the people I
21 represent.

22 And so, that agreement was reached in a way
23 that we've agreed that between now and next summer of
24 '18, the city will continuously meet with the county and
25 try and find ways to collaborate and hopefully

1 contribute financially toward more and better behavioral
2 health services, which would reduce our overutilization
3 of law enforcement to respond to people in a mental
4 health crisis.

5 And because I know that you have read my March
6 16 letter, I'm not going to reiterate anything there.
7 I'm trying to be mindful of our time limit today. I
8 will just say this: That on March 30, after I sent our
9 March 16 letter to the city, I had a very collaborative
10 meeting with quite a few city officials and with
11 representatives from the United States Attorneys'
12 office. And we discussed the matters raised in my
13 letter with one exception.

14 The first point in our letter at the top of the
15 second page relates to the mayor's announcement last
16 fall that he was going to undertake a 14-point
17 initiative to reduce crime in the city, and the lawyers
18 for the city declined to discuss that, saying that they
19 don't see a nexus.

20 And in the interest of time, I'll just say
21 this: That in our view, it is in fact the city policy
22 about what to do about crime that is one of the major
23 reasons why we've had in the past so many episodes of
24 unnecessary force. And I continue to believe that the
25 city does have its law enforcement officials approach

Page 40

1 and apprehend individuals who are impoverished, perhaps
2 homeless, oftentimes having a mental disability, as a
3 government expression of power in order to keep those
4 people out of sight and to not have them bother the rest
5 of us.

6 So I do believe actually that the city's
7 policies directly relate to how many episodes of
8 excessive force occur in this city. Nonetheless, I
9 don't really know what the city's current plan is with
10 respect to their 14 initiatives to reduce crime.

11 I will then say this. That one of the points
12 in our letter, I discussed with you last time and you
13 followed up with the city about it, it was that somebody
14 at the city issued a written report that said some
15 people in the police department think there's an
16 underuse of force. And I said to you that I continued
17 to believe that that kind of attitude and that
18 communication to all APD employees undercuts this
19 initiative that we're all here to try and support.

20 And so, I did ask yet again who authorized the
21 distribution of that report so that police officers
22 would read it. I still do not know. And it's my
23 understanding that neither does your Monitor. And so it
24 would be good to know who has taken it upon themselves
25 to say to law enforcement officials they're not using

1 force enough early enough or often enough, because I
2 think it undercuts our entire premise.

3 Now, I do want to talk about this aspect of the
4 fifth report because we focus on the needs of people
5 with mental disorders. The report talks about several
6 things. And the paragraphs with respect to our special
7 interests that I want to mention are paragraph 120. The
8 Monitor has found that there is training in place that
9 quote, "Will provide clear guidance as to when an
10 officer may detain an individual solely because of his
11 or her crisis and refer them for further services when
12 needed."

13 And I will say this, and this is sort of the
14 ultimate theme. From my experience in system reform
15 cases, that is our biggest problem here. That while 93
16 percent of the policies that have been adopted under
17 this consent decree are now acceptable to the Monitor.
18 So we have primary compliance, 93 percent.

19 That really is only the starting line for this
20 race. If you don't have written rules that are
21 adequate, nothing else happens. And so, we now at the
22 two-year mark have policies, you know, in about 7
23 percent of the areas. But in fact, this particular
24 policy referenced at paragraph 120, it's not being
25 followed.

Page 42

1 Law enforcement officials continue to use our
2 jail as the place to take people because the police
3 officers believe that the individual needs mental health
4 treatment. And as recently as January, at an APD
5 meeting that I attended, a sergeant who was assigned to
6 be there for the police department to talk about when do
7 you arrest people if there's an allegation of domestic
8 violence, that sergeant explicitly said taking people to
9 the mental health center, that doesn't work.

10 And so it is routine for us to take people to
11 the jail because we know they have treatment there and
12 we know that they can't walk away from there. And so in
13 my view of it, even though the training has been found
14 to be in place, in fact, the training is not being
15 followed.

16 So in interviewing law enforcement officers,
17 we've come to realize that some of them do not
18 understand what is an objective basis for taking a
19 person to a mental health treatment or evaluation
20 facility under the state mental health code, and that
21 they don't comply with that.

22 So next. I want to mention that Paragraph 136
23 does in fact require the specialized CIU detectives who
24 are full time working for people with mental disorders,
25 and the COAST team, they are required to make referrals

1 to Community Health Resources when appropriate. There
2 is not a finding of compliance yet with respect to that.

3 And so, we'll see as their reporting processes
4 unfold, whether in fact even the specialists are showing
5 the necessary skills and the appropriate implementation
6 of the rules with respect to getting people into
7 treatment instead of incarceration.

8 Now, I want to say this, Judge. That it was
9 very helpful that within the last year the city decided
10 to do what the consent decree required them to do, which
11 was designate specialists among law enforcement
12 officials who will be the go-to people who you try and
13 dispatch through the radio and get them to the scene of
14 behavioral crises in other cases where it's obvious the
15 person's mental disabilities are the cause of the
16 encounter.

17 But really, it took over two years after the
18 agreement was reached for them to get on to the right
19 path. Because remember, for a period of time, they were
20 saying to you and to the Monitor, "Well, we've trained
21 everybody, so everybody's a specialist." But that was
22 pointed out to them to not be what they agreed to, and
23 so we were very slow getting under way.

24 But now we have begun, and the report says as
25 to Paragraphs 123 and 124, that as of the end of the

Page 44

1 reporting period, there were 71 individuals who have now
2 been trained to be the specialist so that the radio
3 dispatchers can say, "I need an enhanced CIT officer to
4 go to this scene, a specialist."

5 And the APD's calculus is that they're going to
6 need to get to 40 percent, which is what the consent
7 decree requires, that they'll need 180. And the city's
8 own report, based on their most recent data, is that
9 they now have 80, 9 more than is in the Monitor's report
10 because of the passage of time. So we're still less
11 than 50 percent of the way there to having enhanced CIT
12 officers.

13 The other staffing problem identified at
14 Paragraphs 123 and 124 has to do with the CIU
15 detectives, the Crisis Intervention Unit. These are
16 specialists, plain clothes officers, and all they do is
17 try and work with people who have had law enforcement
18 encounters to 1), clean up the mess after the encounter;
19 and 2), go and check on them to avoid a future
20 encounter, and see if they can encourage them into
21 treatment.

22 As I've said to you, we don't think that's
23 legitimate for armed law enforcement officials to be
24 doing that. We think mental health professionals should
25 be doing that. But I will say this: That the officers

1 who are those detectives, I know many of them, respect
2 them, think that they're good people and have some good
3 skills, but we're still only at 7.

4 The consent decree requires 12. You raised
5 this with the APD last time we were together. And since
6 that time, I'm told by Assistant Chief Huntsman that
7 they've agreed to increase the rate of rolling those
8 people out and their projection is, under their most
9 hopeful scenario, by November of this year, they hope to
10 get up to the 12 that they had promised to get into
11 place.

12 Here's one problem. The specialized field
13 service officers who are supposed to be enhanced CIT
14 officers, we seem to be slowing down on the tempo of
15 getting them to volunteer. And so because these
16 specialists must serve as volunteers by the terms of the
17 consent decree, I questioned line officers, some union
18 representatives, and the leaders of the department about
19 this, and here's what I've been told.

20 Decades ago, when we created a CIT program for
21 officers. An inducement to get people then to volunteer
22 was that they were told they would get \$50 a month if
23 they took on this special assignment with extra
24 responsibilities.

25 Well, here we are, decades later, and it's

Page 46

1 still \$50 a month. And I fear that the plan that the
2 Monitor says the city must have in order to get the
3 adequate complement of officers is not going to be
4 successful if we continue to reward these people at the
5 rate of 25 cents an hour to take on these extra
6 responsibilities. So I think we have a problem with
7 getting enhanced CIT officers in sufficient numbers to
8 comply with the court order.

9 So those are the comments I wanted to refer to
10 with specificity with respect to those paragraphs, those
11 provisions in the consent decree, but now I want to turn
12 to the overall points in the report this way.

13 If you heard what I heard, we should both be
14 worried, because what I think I just heard the Monitor
15 say is what we haven't done is tackle use of force.
16 Well, I thought that's why we were here. And what seems
17 to me evident is that the leaders of the department are
18 not in fact going to get this job done.

19 And so, here's the way that I look at it. The
20 things that have been accomplished now, at the two-year
21 mark after you approved the consent decree, all of those
22 were promised to be done by now, and everything else was
23 promised to be done by now. The city set for itself a
24 two-year timeline to achieve a hundred percent of the
25 requirements in the consent decree.

1 According to this report, 47 percent of those
2 promised things have been accomplished at the
3 operational level. 53 percent of them are undone when
4 we reach their own target date. 87 percent failure rate
5 until we respond appropriately to use of force is what
6 Dr. Ginger just said to us.

7 And so, we are very, very far from where we
8 need to be, and I can tell you that based on decades of
9 experience and system reform cases, we've just gotten to
10 the moment that the hard work starts. So we have
11 policies. The hard part is always getting them
12 implemented.

13 And so training them out, and then having the
14 people who approve the policies enforce them, that's the
15 only way you ever get systems changed. Remember, the
16 culture of violence, the culture of violence doesn't get
17 undercut or eliminated unless the leaders of the
18 organization give clear, consistent and persistent
19 leadership. And that's just not been happening.

20 In other system reform cases that I've worked
21 in, cases oftentimes stall out at this juncture. In the
22 Jackson case that Judge Parker works in, the department
23 there reached 70 percent compliance in 2000 and here we
24 are today. And we're at the 80 percent range.

25 And so the hard work is just beginning, and

Page 48

1 there are some very problematic things that have been
2 going on. And that makes me very pessimistic. As we
3 talked about last time, there's been active resistance.
4 This notion of under use of force.

5 During my meeting on March 31, members of the
6 Force Review Board explicitly said to me they continue
7 to believe not enough force is being used and it's not
8 being used early enough. And that's what they're
9 telling the cops who we are trying to get them to change
10 their behavior.

11 There's also several things in the last report
12 of the Monitor, and this report that shows that the
13 leaders of this department, people sitting in this room
14 are undercutting this initiative by denying force
15 actually occurs when it occurs. The use of the term
16 "distraction strike," that's a hit in the head.
17 Sometimes -- we talked last time about a poor fellow who
18 got -- he's down on the ground, and they kneed him in
19 the head and he needed stitches, and at the highest
20 level of the department, they said, "Well, that's not
21 even use of force."

22 And so, when that's the leadership's message to
23 the law enforcement officials who are supposed to be
24 changing their behavior, we have a huge problem on our
25 hands. I would call this active resistance. And yet,

1 the problems that we're facing are such that the
2 department is also being passively resistant.

3 According to the report, there has been this
4 unfolding. During the process of reviewing the policy
5 analysis office's meeting minutes, the monitoring team
6 learned that there was an APD Special Order 1675, which
7 unilaterally, without notice to or approval by the
8 monitoring parties, changed the required review rate
9 for sergeants from two per month, per sergeant, to two
10 reviews per the entire squad, per month.

11 And when the monitoring team asked for a copy
12 of this special order, which can only be issued by the
13 chief of police, we were told it doesn't exist and that
14 we must be mistaken.

15 And so the monitoring team forwarded a copy of
16 the meeting minutes to the department, and asked for the
17 memo, and they still don't have it. Now, this kind of
18 behavior calls into question whether we're ever going to
19 get where we need to go.

20 And then, the last thing that I wanted to say
21 is that the problem is that the department is still
22 taking issue publicly with the Monitor's findings. In
23 the May 2 article in the Albuquerque Journal, where
24 there's a report about what the report said, and

25 Dr. Ginger's report said, "There seems to be no one

Page 50

1 person, unit or group with responsibility and command
2 authority to make change happen, and that there's been a
3 palpable shift in the police department's approach to
4 changes," the city's attorneys said, "I'm not sure why
5 he would say that."

6 It is sort of interesting to see the contrast
7 between his narrative, as opposed to just the raw
8 compliance findings. And so, we are still trying to
9 kill the messenger, and that's bad news.

10 But here's my hopeful note. October 3 of 2017
11 is when the city will have an election. And October 3
12 of 2017 is when someone else will be chosen, and then on
13 December 1 of 2017 there will be a new mayor. And many
14 of us anticipate that because it almost always happens,
15 that there will be a new police chief.

16 And so six months from now, when we come back
17 to see you next time, we will find out who is going to
18 be in charge of this show, and we'll find out if those
19 people bring a fresh approach to this. Because those
20 are the people who either will or will not achieve
21 substantial compliance with the consent decree.

22 And I'm very hopeful that the next city
23 administration will pull all of their oars in the same
24 direction and achieve substantial compliance. And so I
25 do hope, Judge, that you'll just keep riding this horse,

1 because we're in this for a long haul.

2 THE COURT: Thank you, Mr. Cubra.

3 Ladies and Gentlemen: We're going to take a
4 break, 20 minutes. We'll be back and we'll, at that
5 time, hear from Mr. Simonson and Ms. Koenigsberg.

6 (Recess taken from 10:19 to 10:40 a.m.)

7 THE COURT: Ms. Koenigsberg? Who's up?

8 MS. KOENIGSBERG: Mr. Simonson will go first
9 and I'll be second.

10 THE COURT: That will be great.

11 Mr. Simonson?

12 MR. SIMONSON: Good morning, your Honor. Peter
13 Simonson for the ACLU of New Mexico, here on behalf of
14 APD Forward. I want to thank you for this opportunity
15 to address you today on behalf of APD Forward. Our
16 coalition appreciates the opportunity to have a stake in
17 the conversation, the discussion that we're having
18 today, and to continually voice their opinions about the
19 reform process.

20 I just have two brief items that I wanted to
21 raise with you this morning, and then Nancy also had an
22 additional item on behalf of APD Forward that she wanted
23 to discuss.

24 So first item, APD Forward wants to add their
25 voice to the concerns that have been raised by the

Page 52

1 Police Oversight Board regarding the chief's responses
2 to the officer disciplinary recommendations. Three
3 members of the APD Forward steering committee actually
4 sat on the City Task Force, which proposed changes to
5 the Albuquerque ordinance regarding the Citizen/Police
6 Oversight Agency. And they were involved in the reform
7 effort all through the process.

8 The task force explicitly asked for language in
9 that ordinance that would require the chief not only to
10 respond with a decision of concurrence or
11 nonconcurrence, but also to explain in writing if he did
12 not concur with a disciplinary recommendation, why that
13 was.

14 And we asked for that requirement so that the
15 Police Oversight Board and the public could make an
16 independent determination of whether or not the chief's
17 decisions were being made on an arbitrary basis or were
18 based on sound reasoning.

19 And in light of Dr. Ginger's findings, that
20 command and supervisory staff regularly overlook,
21 minimize or rationalize out-of-policy behavior.
22 Regarding the use of force in particular, APD Forward
23 thinks that this requirement of the chief continues to
24 be imperative.

25 We raised this issue in our March 30 meeting

1 with the parties. We were told that the POB and the
2 department were in discussion about how to ensure that
3 the chief continues to comply with the ordinance. We
4 have not yet been informed about the outcome of those
5 discussions, but it is an issue that's of great
6 importance to us.

7 Second, the members of APD Forward were, I will
8 say, very pleased to read in the fifth Monitor's report
9 that APD has made significant headway in policies,
10 training and practices around the use of electronic
11 control weapons, and that the department has
12 substantively improved its CIT training.

13 However, we were quite alarmed by Dr. Ginger's
14 description of, and I use quotes here, "deliberate
15 indifference and deliberate noncompliance by APD
16 supervisors and command level staff."

17 It seems incredible to our coalition that APD's
18 leadership would refuse to remove neck holds in
19 particular from the department's use of force policy
20 when the CASA requires that in quotes again, "APD shall
21 explicitly prohibit neck holds except where lethal force
22 is authorized."

23 Lest we forget, Eric Garner, one of the most
24 widely publicized victims of police excessive use of
25 force in recent years, died from a neck hold applied

Page 54

1 from a New York City police officer. 11 times he cried,
2 "I can't breathe" before suffocating to death. And yet,
3 APD leadership insists on authorizing the routine use of
4 this violent technique.

5 The members of APD Forward wonder if we aren't
6 now reaching the end of APD's rope. Has the leadership
7 gone as far as it's willing to go with reform? Yes, we
8 have seen improvements in special tactical units, in the
9 deployment of electronic control weapons, and in CIT,
10 but for multiple reports now we have been reading that
11 supervisory and command staff persist in minimizing,
12 rationalizing and ignoring even the most obvious
13 violations of use of force policy.

14 This is the heart of reform. Without a working
15 system of accountability, all of the other reforms that
16 APD has to put in place will eventually collapse. We
17 can all celebrate the fact that the rate of officer
18 involved shootings has dropped, but at this moment, APD
19 has no reliable system of accountability, no safety net
20 to ensure that those trends won't one day return as
21 fiercely as they did before.

22 As Dr. Ginger noted in his report, it continues
23 to appear that this monitoring team is the only systemic
24 overseer of on-street activity of APD's officers. APD
25 Forward has enlisted the assistance of a data scientist

1 to conduct a finer analysis of APD's compliance in the
2 most critical areas of reform like the use of Force
3 Review Board, the Critical Incident Review Team, and the
4 Use of Force Investigations and Reporting.

5 The initial results from that analysis suggest
6 to us that we are not nearly as far long as the primary
7 compliance rate cited in Dr. Ginger's report would
8 suggest. I mean, we would be happy to share the
9 analyses with the Court and with the parties.

10 Finally, let me note. We had intended to
11 discuss an Albuquerque Journal story regarding several
12 instances in which APD leadership criticized local
13 judges and media for problems within the department.

14 The city asked us that we refrain from raising
15 that issue here in today's hearing. And so we have
16 actually set up a separate meeting to discuss that issue
17 with the city and with the parties. But I will note
18 that the issue was raised in our letter, and we raised
19 it because we felt like the issue goes straight to the
20 heart of questions around APD leadership and their
21 continued support of reform.

22 So I'll stop there, and I'll invite -- with
23 your permission, I'll invite Nancy to come up and add a
24 further point.

25 THE COURT: Yes, sir. I'm just interested on

Page 56

1 how that dialogue on the last point came about. Your
2 letter referenced those comments?

3 MR. SIMONSON: Yes.

4 THE COURT: Did the city reach out to you at
5 that point, after receiving your letter, and ask that
6 you refrain from discussing that today?

7 MR. SIMONSON: Yes, your Honor. In an e-mail
8 conversation that took place between myself and the
9 parties, all of the parties, they had seen our letter
10 and raised the particular issue. I tried to explain
11 that we saw this issue as germane to the question of APD
12 leadership accepting responsibility for issues that it
13 was responsible for, like the questions that have caused
14 this reform process.

15 We were told that because the issue hadn't --
16 they hadn't actually had an opportunity to fully review
17 that part of our letter, that they would prefer to
18 discuss that independently in a meeting between the
19 parties.

20 THE COURT: Thank you. Ms. Koenigsberg? Or is
21 it Koenigsberg?

22 MS. KOENIGSBERG: Thank you. Appreciate it.

23 THE COURT: Of course.

24 MS. KOENIGSBERG: Your Honor, Counsel Nancy
25 Koenigsberg from Disability Rights New Mexico and we're

1 a member of the APD Forward coalition. I'm going to
2 expand a little bit on the use of force comments as it
3 relates to the CIU.

4 APD Forward continues to Monitor the data about
5 use of force when it involves individuals with mental
6 illness and other disabilities. As everyone likely
7 knows, two of the coalition members are parents of men
8 with mental illness who were shot and killed, so it's of
9 particular interest to APD Forward.

10 So we're watching the data closely. In our APD
11 Forward's March 24, 2016 letter to the Court, we
12 commented upon the city's fifth self report in which it
13 mentions the APD CIU data book. And this is a little
14 background to the three points that I wanted to bring to
15 the Court's attention.

16 So the data book seems to be a compilation of
17 several different PowerPoints that took place prior to
18 October of 2016. And this relates to Paragraph 129 of
19 the CASA, which lists the type of data that CIU was
20 supposed to collect when it encounters somebody in
21 crisis, or mental illness, or other disability.

22 And we believe the data, use of force, is
23 collected under Subparagraph G, which says "techniques
24 or equipment used." So the data book is where this
25 information is to be compiled.

Page 58

1 The data book is in fact on the MHRAC, the
2 Mental Health Response Advisory Committee, subpart of
3 the police department's website. So you have to
4 navigate to get there, but it's findable. And the last
5 date again of that data book is October 5, 2016.

6 So to my points, one of the questions we had is
7 it's not clear if the types of force tracked in the data
8 book includes all of the possible types of use of force
9 discussed in the Monitor's report No. 5.

10 For example, page 67 of the data book says it's
11 tracking Taser use, handcuffs and OC, which I understand
12 is pepper spray.

13 Page 160 of that same data book lists the
14 Taser, use of foam, projectiles and canine; and page 35
15 talks about passive restraints and bean bags.

16 So when it comes to use of force in these
17 incidents, given the number of kinds of use of force,
18 it's hard to know what that label means and what it
19 includes. And since data is so critical at this point
20 in time, we thought it was important to point that out.

21 We don't know whether the things that have been
22 called distraction strikes, the leg sweeps, pushes and
23 shoves have been used when the CIU encounters people in
24 the field. Again, because it's not identified as a use
25 of force, it's hard to know if that's tracked in the

1 data.

2 I believe the behavioral health training, which
3 has been discussed, is markedly improving, likely
4 minimizes these kind of uses of force. But, however,
5 for accuracy's sake, I think it should be more
6 particularly identified in the CIU data book.

7 The second major point is the data book itself
8 is not complete. On page 84, for example, of the data
9 book, it shows a graph of use of force CIU incidents
10 from January to April of 2016. And each month has three
11 bars within the section to describe the use of force. A
12 yes and a no, and a report in progress.

13 So in particular, January had -- '16 had 224
14 encounters with no use of force, which is great; 1 is a
15 yes, and 4 with a report in progress.

16 March was 177 encounters with no use of force,
17 which is again good. 1 yes; and 56 reports in progress.
18 April had 172 nos. There were no yesses recorded, so I
19 would assume that meant none. And there were 34 reports
20 in progress.

21 So we don't know how these other incidents,
22 excuse me, that were reports in progress were resolved.
23 I have not seen anything on the APD on that website that
24 follows through on that. And this relates to -- it's a
25 related point. The MHRAC web page does not contain

Page 60

1 up-to-date data.

2 The last agenda posted is for September 2016,
3 and the last set of minutes is dated July 19, 2016.
4 Regarding use of force data in that time, the January
5 2016 minutes, not actual data given out, but statements
6 reported in the minutes, said that there was one use of
7 a bean bag, and one Tasing in the CIU encounter with
8 people with behavioral health issues.

9 February 2016, there's no data reported. March
10 2016, no data reported. April 2016, there were no uses
11 of force reported by CIU, but it was reported in the
12 minutes that Field Services' use of force in the
13 behavioral call was used, but it doesn't say what type.

14 And then I think, importantly, the May of 2016
15 minutes said data will be distributed on the MHRAC
16 website. I looked at the website again this morning
17 just to make sure. I'm not seeing any more up-to-date
18 data there. Maybe it is, but I just was not able to
19 find it.

20 I think what's important here are a few things.
21 That as Dr. Ginger said, that the drill down right now
22 for the Monitor is data, so we want the data to be
23 accurate, we want it to be complete, and we want it to
24 be current.

25 So that's foremost. I'd also think it's

1 important, since in last year's reports, there were
2 significant numbers of reports in progress about CIU
3 encounters with individuals in behavioral health crisis.
4 So we don't know how those resolved, whether there were
5 additional uses of force or not. And it would be good
6 to have that updated.

7 I know there is a person on APD staff now whose
8 whole focus is the data compilation, so it seems like
9 that should be possible. I also think it's really
10 important, given the discussion today, that there should
11 be a clear definition of what use in force includes,
12 since as I read, there are many different things that
13 were identified as potential use of force, or uses of
14 force, but the whole title, we don't know what all the
15 individual possibilities are in there, and which
16 particular uses of force are used at any one time, which
17 I think is helpful as we're trying to minimize the
18 number of contacts of people with individuals with
19 mental illness between the police, and that if they are
20 -- if those encounters are happening, then minimizing
21 the use of force. So knowing the specifics I think is
22 really helpful.

23 In addition, as promised a year ago May, that
24 the report on use of force would be provided monthly to
25 the Mental Health Response Advisory Committee and posted

Page 62

1 on the website. That's where the public can see this
2 information.

3 One final comment, your Honor, is we read in
4 the paper, I think it was last week, that Deputy Chief
5 Garcia, who's been overseeing the CIU and Behavioral
6 Health Services Unit has been promoted. And he has been
7 a staunch supporter of the development of improved CIU
8 and CIT training, and has facilitated the enhanced CIT
9 officer component.

10 He's also worked to develop more knowledge
11 about people with developmental disabilities and autism,
12 and wants to include that in the training in the CIU
13 training. So his support has been invaluable, and we're
14 hoping the promotion is going to be helpful
15 department-wide. I think it's important to note that
16 the person who will be taking his place, as I understand
17 it, from the report in the paper, is Shane Rodgers,
18 who's the brother of the former CIU contract
19 psychologist Troy Rodgers.

20 And we are hoping that he will provide the same
21 level of support that Deputy Chief Garcia has shown, and
22 that we will maintain the level of training that's been
23 developed since Dr. Rodgers has left.

24 So in closing, I think data is important. I
25 think accuracy and timeliness of data is important,

1 especially when it comes to involvement of CIU with
2 people with mental illness and crisis and other
3 disability. We look forward to seeing that data updated
4 and constantly reported.

5 Thank you, your Honor.

6 THE COURT: Yes, ma'am. Thank you. And
7 congratulations to the deputy chief on his promotion.
8 Ms. Fine and Mr. Harness.

9 MR. HARNESS: Good morning, your Honor. My
10 name is Edward Harness. I'm the executive director of
11 the Civilian Police Oversight Agency for the City of
12 Albuquerque. With me is Joanne Fine, the chairman of
13 the Police Oversight Board. Thank you for this
14 opportunity to address some of the concerns that we
15 have. And again, thank you for the designation of being
16 a stakeholder so that we have the opportunity to address
17 the Court.

18 First, let me say that there are not a harder
19 working group of volunteers than the members of the POB.
20 There's also not a more tenacious group. They will
21 continue to fight to get APD to acknowledge and
22 cooperate with civilian police oversight in Albuquerque.

23 Your Honor, we presented to the Court two
24 letters drafted right after the conclusion of the
25 monitoring period. The first letter expressed some of

Page 64

1 our overall concerns; the second was expressly regarding
2 concerns with APD's Office of Policy Analysis. As you
3 are aware, the independent review officer and the Police
4 Oversight Commission were found by the Department of
5 Justice to be too closely aligned with APD.

6 That's the genesis of the Police Oversight
7 Board and the CPOA being formed. We strive every day to
8 maintain our independence and to meet our duty to the
9 community. Transparency and accountability to the
10 citizens of Albuquerque are at the heart of the
11 settlement agreement reached between the parties.

12 The Albuquerque Police Department serves at the
13 behest of its citizens. Therefore, the citizens of
14 Albuquerque must have a voice in how the department
15 comports itself while policing its citizens. In other
16 words, the citizens must have a say in how policies are
17 developed, implemented, and how APD officers are held
18 accountable.

19 The settlement agreement, along with city
20 ordinances, envisions the Police Oversight Board as the
21 citizens' conduit to transparency and accountability.
22 It is well documented APD wrote the 37 policies related
23 to the CASA without input from the Police Oversight
24 Board.

25 It is our position that this was in direct

1 violation of Paragraph 288 of the CASA, which states,
2 "The agencies shall make recommendations to the chief
3 regarding APD policy and training. APD shall submit all
4 changes to policy related to this agreement, i.e., use
5 of force, specialized units, crisis intervention,
6 civilian complaints, supervision, discipline and
7 community engagement to the agency for review, and the
8 agency shall report any concerns it may have to the
9 chief regarding policy changes."

10 The agency in this case, the POB, attempted to
11 provide a solution to APD by recommending a change to
12 the policy development policy 3-29. That recommendation
13 went to the chief on October 13 of 2016. The POB's
14 recommendation was to insert itself into the policy
15 development flow chart. The chief rejected that
16 recommendation.

17 I'm happy to report, though, as a result of
18 negotiations prior to this status conference, I believe
19 we've reached an agreement to give the POB an
20 opportunity to review policy changes and to come into
21 compliance with Paragraph 288.

22 In our second letter to the Court, we expressed
23 our concerns about the Office of Policy Analysis. OPA
24 is purported to be the quote, "think tank," unquote.

25 The place where relevant data, best practices, Risk

Page 66

1 Management, field experience, supervisor experience,
2 legal concerns and stakeholder input are all supposed to
3 come together to create policy.

4 I am a voting member of OPA and I can assure
5 you that none of that is happening. What is happening
6 is OPA meets biweekly -- I'm sorry, yes, biweekly. The
7 policy under consideration is already drafted with
8 changes. In addition, the policy presented for me to
9 review may have other changes when actually presented to
10 the meeting.

11 Occasionally a department designated subject
12 matter expert, or the drafter of the policy, usually a
13 sergeant or lieutenant, might be there to go through the
14 policy with the attendees.

15 I use the word "attendee" intentionally. The
16 only consistent attendees are the members of POB and
17 CPOA. Other previously appointed APD participants may
18 or may not be there. To phrase it properly, attendance
19 at this prestigious portion of the process has been
20 sparse. APD's presentation of this process to the
21 public is akin to a bait and switch.

22 Last week, I attended the International
23 Association of Chiefs and Police Legal Advisors
24 conference. In the section regarding policy
25 development, most agreed you cannot have a successful

1 police department if your front-line supervisors and
2 middle managers, lieutenants, are writing and developing
3 your policies. Sergeants and lieutenants can't be
4 dictating how your department comports itself.

5 IMR-5 correctly assessed the chief's failures
6 to report his nonconcurrence to the POB. I am happy to
7 report the chief has begun to respond and explain why he
8 disagrees with the findings of the board. The public
9 deserves to know where the chief stands on these issues.

10 Let me point out a few examples. No. 1)
11 I-16915, the most recent officer involved shooting
12 reviewed by the board. The board recommended a
13 suspension for an officer that accidentally fired his
14 weapon. That accidental discharge resulted in an
15 innocent victim being struck in the neck with a bullet.
16 The board also recommended the on SANE supervisor
17 sergeant be investigated for an improper search. The
18 chief in his nonconcurrence letter goes into great
19 detail as to why the search was proper.

20 During this discussion, he states quote, "The
21 suspect had no expectation of privacy," unquote.

22 That should be self-evident. If the suspect
23 had an expectation of privacy in the residence, there
24 would be no burglary. And that's why that subject was
25 arrested. In addition, the officer will receive a

Page 68

1 written reprimand for shooting an innocent man in the
2 neck.

3 No. 2, in my role as the executive director, I
4 make disciplinary recommendations. In order to do that,
5 I must review the officer's disciplinary history. In a
6 recent check of an officer's disciplinary history, an
7 officer received a verbal reprimand for accidentally
8 discharging his weapon while conducting quote, "a press
9 check" unquote, prior to reporting for duty.

10 That round went through his kitchen window and
11 into his neighbor's home. By definition, that is
12 Negligent Use of a Deadly Weapon, New Mexico stats
13 30-7-4 (A) (1).

14 I acknowledge peace officers are exempt from
15 criminal liability while performing their lawful duties.
16 An argument can be made that he was not performing
17 lawful duties. However, civil liability still applies.
18 The officer received a verbal reprimand.

19 No. 3. I'm sorry. Let me go back. As a
20 result of discovering this, the board is going to take
21 up in its discussion in this next meeting a
22 recommendation that the Force Review Board also review
23 all accidental discharges of weapons, which occurs in
24 other jurisdictions.

25 No. 3: CPC No. 131-16: The board recommended

1 a lengthy suspension for an officer having an
2 extramarital affair with his supervisor from the real
3 Time crime center, a loss prevention worker at a
4 Wal-Mart, while on overtime. And being untruthful to
5 the civilian/police oversight agency investigator.

6 Some of the evidence in the case was reviewed
7 by the -- was a video reviewed by the investigator that
8 the complainant refused to turn over. The chief agreed
9 on the findings of the misconduct, but would not find
10 the officer untruthful because he had not reviewed the
11 video. The untruthfulness was in the officer's recorded
12 statement contained in the investigatory file.

13 No. 4: CPC 139-16. The board recommended a
14 suspension for officers arresting two suspects on felony
15 warrants. The arrests ultimately took place at a needle
16 exchange van. The -- I'm sorry. The investigation
17 revealed the officers failed to use the department's
18 arrest warrant risk assessment. The chief exonerated
19 the officer stating, quote, "At no time were the
20 suspects barricaded," unquote.

21 The risk assessment matrix is a tool to help
22 officers operate safely. The risk assessment states if
23 a score of 25 or higher is assessed to the subject of
24 the warrant, contact SWAT for assistance in executing
25 the warrant.

Page 70

1 A cursory review of the matrix showed a score
2 of 65 for each of these subjects. In conclusion, let me
3 state that we concur with the Monitor's assessment
4 regarding the lack of accountability with APD.
5 Unfortunately, the chief sets that standard, and it
6 filters down to the rest of the department. If it
7 Please the Court, I introduce Chair Fine.

8 THE COURT: Mr. Harness, just a moment. You
9 indicated that the chief was now responding, which was a
10 new development that we had gone for some time that he
11 was not responding as the POB believed he should. When
12 did that happen? When did this change occur?

13 MR. HARNESS: The changes occurred over the
14 last 60 days. So we have received nonconcurrence
15 letters with explanation for the last 60 days.

16 THE COURT: All right. So this was an issue at
17 an earlier meeting of ours, and it persisted in this
18 fifth report from the Monitor. But within 60 days, now,
19 you're saying we've got some response?

20 MR. HARNESS: That's correct, your Honor.

21 THE COURT: Thank you.

22 Ms. Fine.

23 MS. FINE: Again, I'm Joanne Fine. I'm the
24 chair of the Police Oversight Board. Good morning, your
25 Honor. I'm grateful to have the opportunity to address

1 the Court on these matters which are so very important
2 to the people of Albuquerque. I believe the Monitor's
3 current report is an accurate assessment of what has and
4 has not transpired in the reporting period.

5 As it relates to civilian oversight, the
6 obstructionist, dismissive and often disrespectful
7 behavior by APD leaders dates back to the beginning of
8 our volunteer term over two years ago. It would seem
9 the parties, except for APD, are in some agreement that
10 APD is not interested in and certainly not committed to
11 reform.

12 As a community member, I do not expect fast
13 reform. I did expect more significant reform this far
14 into the journey. 27 months in, the civilian oversight
15 process is still trying to secure a meaningful place for
16 our board in the APD policy process, a promise that has
17 recently been made, but again, not yet realized.

18 We are still awaiting for a reasonable amount
19 of time as a board to review serious use of force in
20 officer involved shooting cases, and still be within the
21 discipline time frames established by the APD union
22 contract.

23 We are still stymied by a lack of data either
24 because it is surprisingly not collected at all, or
25 because not much of it is retrievable or easily

Page 72

1 accessible, or so we have been told. We have been
2 patient. We are extremely frustrated.

3 There is an old adage says that "There is
4 always time for the things at the top of your list." At
5 this point, I am nearly certain civilian oversight,
6 civilian input, civilian concerns are not on any list
7 for APD leaders, let alone near the top.

8 Your Honor, I close with two questions for your
9 consideration at a time of your choosing. I have been
10 told APD cannot reach compliance with the CASA without
11 meaningful civilian input. I would like to know if you
12 agree with that, sir.

13 Secondly, I would like to know, on behalf of
14 the people who live here, what range of tools the Court
15 has at its disposal to encourage or demand that APD meet
16 its obligations of the CASA. What happens if APD
17 leadership continues to drag its feet and obstruct this
18 process? Thank you.

19 THE COURT: Well, with regard to your first
20 question, yes. And with regard to the second, I began
21 the day by saying I wanted the city to take particular
22 heed to what was said by the Amici, because within 30
23 days, I'm going to have an action plan presented from
24 the city to address each of your specific points. And
25 we'll see if that tool at my disposal causes any change.

1 And I'll keep you posted.

2 MS. FINE: Well, I was encouraged by, and we
3 all feel hopeful that change will come at some point. I
4 don't think the community should have to wait until
5 October for that to happen. So I'm looking forward to
6 what the powers that be, in this circumstance, can do to
7 make change happen at a more reasonable pace and at a
8 higher quality.

9 THE COURT: Thank you, Ms. Fine.

10 Mr. Miera?

11 MR. MIERA: Good morning, your Honor. Thank
12 you for hearing the MHRAC's report today. We talk about
13 MHRAC a lot. I think there are some individuals that
14 are not familiar with what MHRAC is, Mental Health
15 Resource Advisory Council. And as such, your Honor, we
16 meet monthly.

17 These are individuals who are volunteer --
18 voluntarily coming to this monthly meeting. I think
19 it's notable to talk about the meeting, because we
20 usually have at least 90 percent rate of the individuals
21 who are on that board, and there are many of us, up to
22 20 at any one particular time. Sometimes mostly a
23 hundred percent attendance is normal.

24 Individuals that sit on that board come from a
25 variety of different resources, opportunities given to

Page 74

1 the committee, and many are individuals with mental
2 illness themselves and are part of the board.

3 The police department is there all the time.
4 We have a great presence. And they respond to questions
5 when asked, and we're very proud. I think Nancy made a
6 good statement regarding one of the individuals who was
7 always there and responsible. That captain,
8 unfortunately, is being promoted.

9 We're probably going to miss him very much,
10 because we've had great interactions during the meeting
11 and after the meeting. We have subcommittee meetings
12 that meet as well on other time periods, and those
13 subcommittees give an important amount of the detailed
14 information that we need at the regular committee
15 meetings to be able to make some decisions.

16 Your Honor, I think as Peter Cubra stated
17 earlier, MHRAC has been working well with other related
18 programs and agencies outside of APD, and your Honor, I
19 think this is important. Because as you can well
20 imagine, mental health is a big organization in and of
21 itself, whether at the University of New Mexico, at
22 the -- unfortunately, at the Metropolitan Detention
23 Center, or out in the community.

24 But as such, we had some changes with regards
25 to the funding through the county. We had some

Page 75

1 individuals who brought forth an idea that we should be
2 able to spend another 1/8 cents sales tax. That went
3 forward and then had that opportunity to do that. Those
4 new monies, about \$20 million, have a significant impact
5 on what happens within the mental health in this
6 particular community, and then to impact MHRAC. I'll
7 talk about that a little later on.

8 I think what's most important is there are
9 other agencies, even within the Metropolitan Detention
10 Center, that are also looking at what impact -- whatever
11 they're doing there has an impact on the community. And
12 I think MHRAC sits in the middle being able to pick up
13 what it is that was asked of us by the CASA guidelines.
14 And we try to meet those guidelines as much as possible.

15 That being said, I think it was important, it
16 was maybe briefly talked about -- you heard the mobile
17 crisis team that is available right now, within the
18 facilities of APD, those are individuals who are well
19 trained and will be responding to individuals with
20 mental health problems in their communities, in their
21 homes, if necessary, which is not an unusual situation.
22 But as we try to move more forward to seeing if we can
23 keep them out of the detention facility, out of the
24 Bernalillo County mental health center facility, in and
25 of itself.

Page 76

1 These are individuals that are trained to
2 de-escalate and hopefully help these individuals not
3 have to attend either one of those particular
4 organizations.

5 That being said, I think it's important, is
6 that that is police-driven at the particular point in
7 time with regards to the mobile crisis teams. And so,
8 there are opportunities in the future, with maybe even
9 to a different type of team that's going to want
10 individuals who are not related to the police
11 department, and may be able to help that community
12 engagement teams' individuals who will be able to go
13 out.

14 All of these have been looked at by MHRAC in a
15 limited basis, and I say that because those other
16 individuals are responsible, other teams, other places
17 are responsible for putting all that together. I think
18 as we look at the overall issues with regards to mental
19 health, there's an awful lot out there, but I appreciate
20 the time that the individuals who are working with MHRAC
21 have given us to be able to have this kind of
22 conversation.

23 It's not the best. We sometimes will miss
24 that. But those individuals will come and speak to our
25 particular MHRAC meetings. We do whatever we possibly

1 can. MHRAC is open to the public. As of this date, we
2 have yet had anybody have any complaints about their
3 inability to come and speak to us or inability to want
4 to listen to them. We have open mic times and it's
5 utilized frequently that individuals don't feel like
6 they don't have a problem with their ability to talk to
7 the MHRAC.

8 As I move on to talk about maybe some other
9 issues that -- and these are small issues, because I say
10 small in terms of the impact that they may have is not
11 small. But the smallnesses that we've talked about this
12 before, and it's a little above and beyond MHRAC's
13 opportunity to take a look at changing that. That is
14 pretty much the information sharing subcommittee that we
15 have that has brought forth an awful lot of
16 opportunities to say what should we do now with what
17 information that we have.

18 We're talking specifically now about lapel
19 cameras. As we look at individuals who have mental
20 health issues and the conflict between what the camera
21 picks up and what individuals have with regards to
22 having whether it's HIPPA, and the individuals, which
23 would be under the mobile crisis teams, or the community
24 engagement teams, these are professionals that are going
25 to go out and interact with individuals.

Page 78

1 Do they become their clients at that particular
2 point in time, which then HIPPA rules may or may not
3 appear or be of significance. Or, police officers who
4 have a lapel camera on, that unfortunately the rules and
5 regulations, as we have them right now, say as you think
6 you're going to be individually coming into a contact
7 with a person who has mental illness, you have to turn
8 on that camera.

9 Does that camera become public information for
10 anybody else who wants to see that? So there's an awful
11 lot too that we haven't resolved. I bring this. I
12 brought this before. You remember that we brought this
13 before. We bring this, at the Court to say we're going
14 to need some support as this thing moves on and as more
15 and more people go out of the way of getting into
16 situations where maybe just police officers are involved
17 with individuals with mental health issues, but people
18 going into their homes, etc. So we may need some more
19 support on that particular issue, legal support,
20 otherwise as well.

21 Your Honor, I think I again want to go back to
22 what Nancy talked about before. And I think it's
23 important, my final issue, and our revolving door issue
24 with you, your Honor, is that we need some
25 administrative support for MHRAC.

1 As I mentioned, these are people that are
2 volunteering their time, and as such, we don't have the
3 capabilities to have a professional secretary or
4 whatever else. It may seem minor to you, your Honor,
5 but I tell you, if we're going to be able to keep up
6 with what Nancy talked about, putting things in, getting
7 them on the Internet, etc., etc., these are important
8 issues to us. And as we get deeper and deeper into some
9 of these issues, we're going to need some of the support
10 that individuals are giving of their time.

11 I just hate to ask them, "Would you please go
12 home and do this extra set of stuff," that maybe a good
13 administrative secretary could do. We're to the point
14 right now where I'm afraid, as was reported here
15 earlier, we don't have some of these where they should
16 be. Needless to say, all the minutes have been taken
17 and they're all related. They're all available to you
18 right now.

19 Where as I'm sure we wouldn't have gotten, as
20 Mr. Ginger said, we are the -- I shouldn't have to look
21 it up, but we are the shining star on this particular
22 issue. We feel comfortable to be able to hear that
23 comment. But we want to be better than that. We want
24 to be able to be more than that. And as such, we're
25 going to need that support staff. And we've asked for

Page 80

1 it, there's been talk about it, we've moved towards it.

2 It just doesn't happen yet. It's a small part.

3 I'm hoping maybe it can be resolved by tomorrow
4 morning. If that's the case, we don't have it today.

5 We'd like very much to have that. Because as was
6 stated, data is useful. And the only way we're going to
7 be able to capture that data and change the meetings
8 like we have been -- in fact, we changed meetings to
9 come out and talk to MHRAC and vice versa. Individuals
10 can hear from MHRAC. Those are the smaller issues that
11 make it the bigger issues, make MHRAC not the shining
12 star today, but in the future, your Honor.

13 THE COURT: Mr. Miera, Ms. Koenigsberg did say
14 that the data on your website was out of date. You're
15 acknowledging that, I guess.

16 MR. MIERA: On the website, I am. But we have
17 the minutes. And everybody that's on MHRAC gets those
18 minutes. We get them in e-mail sent to us, to all
19 individually. You know, somebody just posting those
20 things where they should be on a timely basis and all
21 the information that we receive at MHRAC. Because we
22 get a lot of information that comes to the meetings.
23 That too, whatever the information that has been brought
24 to by a variety of different individuals, that should be
25 posted on.

1 We just haven't had that kind of flow of
2 information as we did. So we would like to be able to
3 do that. If we could have a professional secretary, not
4 just a part-time one, a full-time one, I think we could
5 keep them busy. But we'll take what we can, your Honor.

6 THE COURT: Thank you. Thanks very much for
7 your volunteering and congratulations on that shining
8 star.

9 MR. MIERA: Thank you, your Honor.

10 THE COURT: Ms. Hernandez, two particular
11 issues there I'd like you to address later in your
12 comment, or with your action plan within 30 days. This
13 issue of the automatic use of the audio cam when you
14 encounter someone that's suffering from a disability,
15 that's an issue that has persisted. I'd like to put
16 that to bed.

17 And whether and to what extent you can assist
18 with administrative support for MHRAC, I'd hear you on
19 those things today or within 30 days. Thank you. I
20 think that concludes the remarks from the Amici.

21 Mr. Saucedo or Ms. Martinez, who's got the ball
22 for the government?

23 MS. MARTINEZ: Elizabeth Martinez.

24 Good morning, your Honor. May it please the
25 Court, Counsel for the City, Albuquerque Police

Page 82

1 Department, and the Police Officers Association,
2 Dr. Ginger, colleagues from the Department of Justice,
3 members of the Albuquerque community: We are gathered
4 again for the fifth time to discuss the progress that
5 the City of Albuquerque and the Albuquerque Police
6 Department have been making towards implementing the
7 reforms in the CASA.

8 My colleague, Luis Saucedo, will be addressing
9 that progress on behalf of the United States in a
10 substantive manner. But before he does that, I would
11 like to take a few minutes to make some comment on
12 behalf of acting U.S. Attorney James Tierney, who
13 regrets that he could not be here this morning.

14 Before doing that, I would like to comment,
15 because I noticed that the Court responded and also the
16 Court's clerk when Mr. Harness indicated that there were
17 two letters from POB and CPOA. I filed one letter and I
18 think there was a misunderstanding between me and
19 Mr. Harness. I had inquired whether he expected both
20 letters to be filed, and I misunderstood. I only filed
21 one.

22 So immediately after we conclude today's
23 hearing, I will make sure that you get that second
24 letter. I am aware that all of the parties and
25 Dr. Ginger did receive that letter, and that second

1 letter is the one that addresses the Office of Policy
2 Development concerns that the board -- the Police
3 Oversight Board and CPOA have. So I will make sure that
4 the record of this proceeding is complete as soon as I
5 can.

6 Judge, we greatly appreciate the fact that the
7 court shifted the agenda to permit our community
8 volunteers to speak before the Court, before the
9 parties. As the Court can see from the folks who are
10 assembled here today, this reform process is extremely
11 important to this community. There are a lot of people
12 in this community who are devoting substantial amounts
13 of their time, on a volunteer basis, not only to support
14 this reform effort, but also to be an integral part of
15 that process.

16 You have heard from some of those folks today,
17 and they include folks who serve as police on the
18 oversight board, the MHRAC, the community policing
19 councils who are not speaking here today, but there are
20 a number of those members in the audience today.

21 Obviously, APD Forward and the McClendon Amici.
22 I think that the voice they bring, which is the voice of
23 the community, is critically important, and the United
24 States -- and I believe all of the parties and the
25 Monitor greatly appreciate the value that they add to

Page 84

1 this process and their important role in it. So thank
2 you very much, your Honor, for making sure that this
3 process includes the community.

4 Jim Tierney has specifically asked me to thank
5 those volunteers not only on his behalf, but also on
6 behalf of the U.S. Attorney's Office and the Department
7 of Justice. I also want to comment, Judge, that we also
8 have many members of our community who are here who may
9 not be involved in a formal way, but who have been
10 supportive not only of this reform process, but also are
11 men and women of our police department.

12 They are important to this process, and they
13 have made it clear, by attending many, many meetings and
14 regularly coming to these hearings, and we appreciate
15 the fact that they continue to support the process, and
16 that they continue to support our police department.

17 As Dr. Ginger has discussed, the city and APD
18 have made tremendous progress in a number of aspects of
19 this reform process, and Dr. Ginger has very graphically
20 demonstrated that process in the chart that he included
21 in his report, but he has also made clear that there are
22 significant areas that we need to continue to work on.

23 We want to thank the Albuquerque community for
24 supporting APD as it has made this very significant
25 progress. And we also want them to stay with us and to

1 continue to be involved, because our police department
2 will require their support as we go through the rest of
3 this process.

4 Mr. Tierney wants this court, the city, the men
5 and women of the Albuquerque Police Department, and the
6 Albuquerque community to know that the U. S. Attorneys'
7 Office and the Department of Justice remain fully
8 committed to this process, and they're fully committed
9 to working with APD and the city and the community to
10 make sure that this settlement agreement is fully and
11 effectively implemented.

12 Our support of this important reform process is
13 part of our continuing commitment to protecting the
14 civil rights of the Albuquerque community and to making
15 sure that our police officers work within a system that
16 gives them the tools to be safe and to help them
17 succeed.

18 And with that, Judge, I'm going to turn this
19 over to my colleague, Luis Saucedo.

20 THE COURT: Mr. Saucedo.

21 MR. SAUCEDO: Good morning, your Honor. May it
22 please the Court: Luis Saucedo for the United States.
23 Your Honor, I'd like to cover a couple of procedural
24 issues before I get into the substance, a response to
25 the substance of Dr. Ginger's report.

Page 86

1 But I would like to say that the United States
2 does have a positive outlook as far as the current state
3 of compliance. The CASA now really, as you can -- as
4 you've heard this morning from people with different
5 experiences looking, who are responsible for different
6 aspects of the CASA, that the CASA does -- is serving as
7 a shared framework for discussing reform, for discussing
8 goals.

9 And that's really important. Because I don't
10 think we were there a year ago or a couple of years ago.
11 And having MHRAC explain that they're moving forward,
12 that there's open communication among other entities
13 involved in this process is really good news, it's very
14 positive news.

15 The United States also has the experience of
16 working with other jurisdictions that have seen them go
17 through these same challenges. This is difficult work.
18 But what's important is that they have found ways of
19 overcoming those challenges and coming into compliance
20 with the agreement.

21 So, I wanted to share that, your Honor, at the
22 outset. Your Honor, the Monitor's reports now cover a
23 six-month period as opposed to a four-month period.
24 That was a request we made to the Court to expand that
25 review period. That does give Dr. Ginger greater

1 opportunity to review the practices of APD in the field.
2 It also provides greater opportunities for feedback and
3 for corrective action to be taken by APD now that we
4 have most policies and training completed.

5 Like prior reports, the fifth report provides a
6 comprehensive assessment of each substantive paragraph.
7 The report reflects considerable work by the Monitor and
8 his entire team. While we may not agree with every
9 conclusion that's reached by the Monitor, we do
10 appreciate their thoughtful review and analysis.

11 We also appreciate all the hard work of APD
12 officers, commanders and support staff. As my colleague
13 Elizabeth Martinez said, the commitment of city
14 officials, oversight professionals and volunteers who
15 are all a part of this process.

16 Your Honor, there are two changes that
17 Dr. Ginger made to this report that we wanted to
18 highlight. One of those changes is that he has now
19 included tables to represent the results of his review,
20 when he's looking at files on use of force, or when he's
21 looking at internal affairs files.

22 The tables he's providing, in our view, are
23 helpful and useful in trying to understand and to
24 pinpoint where the weaknesses are in the process. So we
25 do appreciate that change that was made in this fifth

Page 88

1 report.

2 We also appreciate that he has highlighted
3 recommendations in each area where he finds that there's
4 partial or noncompliance. Those recommendations are
5 required by the CASA. The city is free to choose from
6 those recommendations or to take other alternative
7 measures to reach compliance, but we require that the
8 Monitor include his insight and his experience to share
9 that insight and experience to help APD move forward.

10 These two changes are part of broader
11 commitments that were made by the Monitor, the parties,
12 APOA, and the United States. We spent a considerable
13 amount of time earlier this year working on improving
14 communication and trying to make sure that the reports
15 are as accurate and as complete as possible. And we
16 look forward to working with everybody, with Dr. Ginger
17 and the city, to determine whether we need to make any
18 additional changes to the report, so that they are more
19 complete and more accessible.

20 Your Honor, the fifth report evidence is
21 remarkable progress by APD. As we saw in the Monitor's
22 presentation earlier, the Monitor has found increased
23 compliance in each compliance category: Primary,
24 secondary and operational. This is a positive trend
25 that we should keep in mind as we address the compliance

1 challenges that lay ahead.

2 And while not all paragraphs weigh the same,
3 some are more important to reaching sustainable reform
4 than others. The big picture presents a positive
5 outlook for APD. I'd like to take a moment to highlight
6 several key improvements that are included in
7 Dr. Ginger's report.

8 The first of those is seeing improved
9 deployment on electronic control weapons. Those are
10 commonly known as Tasers. Dr. Ginger did look at all
11 ten uses of Tasers. I believe he found that two of
12 those were not uses of Tasers, so we ended up with
13 eight. But based on his review, APD has made
14 considerable progress in deploying this less lethal
15 force in accordance with the CASA.

16 The city's in compliance with all but two
17 issues related to this less lethal weapon, and they
18 relate to internal audits and analyses that would help
19 APD better monitor the use of these weapons.

20 To remind everyone here, in 2014, when we
21 issued our investigative findings, we found serious
22 problems with APD's use of electronic controlled
23 weapons, including the deployment against individuals
24 who posed only minimal threat to officers and a lack of
25 internal controls.

Page 90

1 The fifth report provides evidence that APD's
2 using this tool to apprehend suspects in a safer and
3 more effective way. That's an important achievement
4 that we see from Dr. Ginger's report.

5 We're also seeing continued improvement in the
6 management and oversight of specialized tactical unit.
7 APD continues to make commendable progress in the
8 management and operation of these units. Dr. Ginger has
9 found them in compliance in all but one area, one
10 paragraph in the CASA.

11 This means that based on Dr. Ginger's review,
12 APD's specialized tactical units have developed
13 appropriate policies and training, and that they're
14 performing their duties accordingly. And again, I go
15 back to where findings from 2014, your Honor, we noted
16 that there was a near absence of organizational
17 accountability of the Special Operations Division.

18 We found that officers were simply afforded too
19 much autonomy, insulating them from effective oversight
20 and management. As of January 2017, this year, the
21 period covering this report, the Monitor has determined
22 that the Special Operations Division continues to
23 demonstrate that it meets or exceeds APD policy,
24 applicable law and best practices, and that it serves as
25 a model for other APD units.

1 The one area that remains outstanding is the
2 appropriate calculation of bite ratios for the canine
3 unit. Bite ratios are intended to help APD identify a
4 potential problem that may require corrective action.
5 We want to make sure that these ratios serve as useful
6 risk management tools for APD, and that they're working
7 in concert with other accountability systems.

8 We're working with the parties and the Monitor
9 to resolve these issues as part of the six-month policy
10 review process. There are other notable improvements,
11 and we've heard about them today. The Behavior Sciences
12 Unit has shown greater stability with new leadership.
13 The Special Investigations Division. These are the
14 detectives and the staff, or the personnel who are
15 charged with investigating crime. They're contributing
16 to better deployment of the specialized tactical units
17 through the use of a risk matrix.

18 And so these provide an objective way of
19 determining when specialized tactical units are
20 required, and the Special Investigations Division is
21 also showing progress in that area. We're seeing better
22 or improved performance and greater stability with the
23 Mental Health Response Advisory Committee, or MHRAC.

24 The Monitor also found many other paragraphs in
25 other areas in full compliance related to recruitment,

Page 92

1 field training, performance evaluations, and civilian
2 oversight by the Civilian and Police Oversight Agency
3 and by the Police Oversight Board. So we don't want to
4 lose focus that there are a lot of positive things in
5 this report.

6 The Monitor's ratings are not the result of
7 haphazard performance or implementation, but from the
8 sustained effort of many individuals who worked inside
9 and outside of APD.

10 I'd now like to turn to an area that is in need
11 of special attention that is essential to CASA, and that
12 is the force investigation process. This process is
13 critical to strengthening the community's trust in APD,
14 because it demonstrates APD's ability to prevent use of
15 excessive force and to self-correct when they see
16 problems arise.

17 When mistakes are made, those are opportunities
18 to learn to prevent those mistakes. When there are
19 positive outcomes, those are also learning
20 opportunities. And what the CASA hopes to accomplish is
21 to be able to capture those experiences, those mistakes,
22 and those positive outcomes, so that we're using them to
23 prevent excessive use of force.

24 And I think this is one of the reasons why
25 Dr. Ginger really emphasizes this point in his

1 presentation and in his overall assessment, is that
2 APD's ability to self-correct and self-identify these
3 problems, even before the Monitor arrives on site, I
4 think is critical to demonstrating that we're in
5 compliance, and that those reforms that we're seeking to
6 achieve have actually taken hold.

7 Dr. Ginger and his team reviewed carefully a
8 sample of use of force incidents and APD's response to
9 those incidents. The fifth report details Dr. Ginger's
10 findings, including weaknesses in each step along the
11 force investigation process.

12 While APD's performances investigating these
13 force incidents is of concern, it's not entirely
14 unexpected. APD is undergoing significant overhaul of
15 this entire process. If I can go back, as Dr. Ginger
16 explained, APD completed its new use of force policies
17 early last year. This is early 2016.

18 And over the course of several months, APD has
19 sought to clarify new policy expectations through
20 training, instructional videos and bulletins. This is
21 where APD had found that certain aspects of the policy
22 needed clarification. We have seen those steps being
23 taken along the way.

24 APD has also trained officers on these new
25 policies. So this reporting period, August 2016 to

Page 94

1 January 2017, is really our first opportunity to see how
2 officers, as a whole, are applying all of these new and
3 revised policies to real encounters in the field, and
4 how supervisors are adjusting to the new oversight
5 process.

6 Dr. Ginger does offer a sobering assessment
7 that out of the 16 cases that his team reviewed, zero
8 percent showed an effective command level review of the
9 officer's use of force. Dr. Ginger also found instances
10 where APD did identify problems early on, and he gave
11 them credit for that, because when APD finds mistakes or
12 finds problems, that's a sign that the process is
13 working.

14 And again, this is why I think it's really
15 important to emphasize the importance of command-level
16 reviews and the supervisory reviews that take place.
17 Dr. Ginger's compliance recommendations serve as a road
18 map for APD on how to respond to these findings and
19 ensure that APD is making continued progress.

20 I'd like to make one last observation, your
21 Honor, on where we are in the reform process and the
22 steps we need to go in the future. We agree with
23 Dr. Ginger's opinion that the current state of
24 compliance is well described as a collection of parts,
25 as opposed to an integrated system.

1 And while this may sound like a strong or harsh
2 criticism of nearly two years after this Court approved
3 the CASA, it is evidence that APD is on the right path,
4 because we now have confirmation that these parts exist
5 and that they're in place.

6 What are these parts? Well, the CASA consists
7 of nine different sections. In each of these,
8 Dr. Ginger has found significant improvement, and you
9 know, again, just to pull some of this together, we now
10 have a full set of compliant -- of policies that are
11 compliant with CASA. Changes are being made to make
12 them stronger, but we have an initial set of policies
13 that the Monitor has found independently implement the
14 requirements of the CASA.

15 We have a strong recruitment program that is
16 attracting capable individuals. We have an effective
17 preservice training program where cadets are seeing the
18 CASA as standard and essential. We're not having to
19 change their mindset. They haven't developed bad
20 habits. These are individuals who are coming in and
21 seeing the CASA as something normal, and they become our
22 change agents within the police agency.

23 We have a group of engaged professionals on
24 MHRAC who have found their footing in the process, a
25 disciplined and well-trained specialized tactical unit

Page 96

1 that is doing its part to prevent excessive force and to
2 minimize harm. We have a robust oversight community
3 engagement that's supporting APD's efforts.

4 All of these parts are intended to work
5 together and to reinforce weaker areas that are
6 difficult to change, like the force and review process.
7 The next phase of implementation, as Dr. Ginger
8 describes, involves getting all these pieces or sections
9 working together to achieve measurable results as part
10 of an integrated system.

11 Your Honor, we're already seeing very promising
12 signs in this regard with fewer firearm discharges and
13 more appropriate uses of less lethal force.
14 Dr. Ginger's next report, which is due in early June,
15 will be looking at outcome measures, number of injuries,
16 number of uses of force.

17 I think it will be helpful for us to see what
18 the results of all of this effort are, what the results
19 are through this next report that Dr. Ginger will
20 provide.

21 Your Honor, I'm happy to address any questions
22 that you might have.

23 THE COURT: Well, two things, Mr. Saucedo.
24 Ms. Martinez indicated a moment ago that Mr. Tierney,
25 the acting U.S. Attorney, had indicated that the U.S.

1 Attorney was committed to this process, and I just
2 wonder to what extent that speaks beyond the local level
3 and up to Attorney General Sessions. Is the Department
4 of Justice committed to this effort from the top down?

5 MR. SAUCEDO: Your Honor, the United States is
6 committed and the Department of Justice is committed to
7 this process. We have not received instructions to
8 change course. We continue to enforce the decree. Our
9 DOJ team that is made up of lawyers and staff from both
10 the Civil Rights Division and the U. S. Attorneys'
11 Office are here this morning, and they are going to be
12 here this week talking to APD, with APD and the
13 community. And so we remain fully engaged and committed
14 to achieving the outcomes of the CASA.

15 THE COURT: So thank you for that. And I guess
16 you'll keep us posted of any developments.

17 MR. SAUCEDO: Yes, your Honor.

18 THE COURT: And gosh, by now, everyone should
19 know that I am interested in good news. I like hearing
20 that things are working, and I like hearing that there
21 are some shining stars out there. But there's a
22 elephant in this room that no one has talked about yet
23 this morning. Language, specific language from the
24 Monitor's report that describes deliberate
25 noncompliance, deliberate indifference.

Page 98

1 And you have taken some time this morning to
2 talk about the positives, and acknowledge that, well,
3 that there is that use of force thing, you know, that we
4 have to talk about. Well, where does this come from,
5 and how does it go uncommented on to this point in the
6 day?

7 MR. SAUCEDO: Yes, your Honor. The Monitor
8 does point to certain facts in his report to conclude
9 that APD is deliberately noncompliant. He makes these
10 determinations on very specific issues. And so I think
11 we're able to reconcile our view of things because we
12 are looking at the big picture where there is overall
13 compliance.

14 And those very specific issues where Dr. Ginger
15 has found that there is deliberate noncompliance, I
16 think we heard from him today, in some cases, he's not
17 seeing sort of purposeful retreat from the agreement,
18 that he's seeing diligent efforts. All of those things
19 are important.

20 In some cases, Dr. Ginger said that if APD or
21 the city doesn't take action on a problem he's reported
22 over and over, that he would find evidence that there is
23 deliberate noncompliance. And examples of those are the
24 inability of an individual to submit an anonymous
25 complaint. So the city has been on notice that

1 currently, or as far as they reported during the
2 reporting period, that individuals are not able to
3 submit those complaints anonymously, and it has been
4 over the course of several reports where he's made that
5 finding.

6 And so, I think that would present a situation
7 where, if there is no progress, I think that would start
8 to demonstrate that sort of the deliberate
9 noncompliance. I do want to address two specific things
10 that have been addressed or raised today, where
11 Dr. Ginger did refer to deliberate noncompliance.

12 One of those are neck holds. We have not seen
13 the city or APD retreat from their commitment in
14 prohibiting neck holds, or saying that when they occur
15 they should not be investigated fully. They are
16 considered serious uses of force. Neck holds -- and
17 it's important to think about what they are.

18 Neck holds are techniques or actions taken by
19 officers to restrict the blood flow or air flow. And
20 that's what causes them to be higher risk techniques.
21 And for those higher risk techniques, we are requiring a
22 high-level investigation.

23 What the city brought to us was their concern
24 that not every incidental contact with the neck was a
25 neck hold. Not every contact with the neck restricted

Page 100

1 blood flow or air flow that would raise the level of
2 risk for those individuals.

3 And so what APD and the city were looking for
4 was a way to better define those terms so that it was
5 clear to the officers and to the supervisors who were
6 looking at uses of force. And we have discussed, as
7 part of the six-month review process, ways to address
8 those definitional issues.

9 I think we all need to be able to agree that
10 when there is a neck hold, that APD identifies it as a
11 neck hold, and that Dr. Ginger identifies it as a neck
12 hold. And for that, we need to have very clear
13 definitions in policy, and that's where we're headed.

14 So in that specific instance, we're not
15 endorsing this view of deliberate noncompliance because
16 we continue to see that APD is committed to treating
17 those types of force incidents as very serious and that
18 require a high level of reviews.

19 The other point that I wanted to address is are
20 these special directives. And I know that Dr. Ginger
21 described one such directive as covert. I think we need
22 to understand that the city and APD need to be able to
23 -- and the chief need to be -- they need to be able to
24 manage APD. And if they see a problem in policy,
25 especially one that involves some sort of safety issue,

1 it would be impractical, and I don't think we would want
2 to go through the normal policy review process that
3 could take months.

4 And so, what we've seen, and what the city has
5 indicated to us, is that some of these directives have
6 been stopgap measures to address very practical or
7 serious concerns. What's important is that some of
8 these stopgap measures might actually be proof that the
9 system is working, right, that they are identifying
10 problems and taking prompt action to fix them.

11 And so we're working with the city, with the
12 Monitor. We discussed this at our last monthly meeting.
13 We discussed that we need to develop a process to make
14 sure that Dr. Ginger is aware of when these special
15 directives are issued, and that we understand sort of
16 the impact that they have.

17 But again, your Honor, in those two specific
18 instances, we've not seen APD retreat from its
19 commitment in the CASA.

20 THE COURT: Well, with regard to neck holds,
21 we're two-plus years in and we don't have a definition
22 yet? Is that what you're telling me?

23 MR. SAUCEDO: Well, your Honor, the city is --
24 the city -- your Honor, it did take a long time to
25 address this issue. And the solution that's been

Page 102

1 identified is changes in the definition of neck holds
2 that we're seeing in the six-month review of this
3 policy. So we do see that changing so that everyone is
4 -- we should try to -- we need to eliminate any
5 discrepancy between the Monitor and APD's review of
6 these incidents, right?

7 They should be looking at the same thing and
8 for the same thing. And it really does go back to these
9 definitions. And I think policy development really is a
10 continuous process. And so I think we will be reviewing
11 a policy that does have a solution in it, and as part of
12 this process, we would be reviewing and approving that
13 policy.

14 THE COURT: One or two other things, please.
15 At page 126 of the Monitor's report, he is referencing
16 the Monitor's circling back to APD about particular
17 cases. And he says it's nearly incomprehensible that
18 after five attempts to prompt a legitimate follow up on
19 cases that the monitoring team has identified as
20 problematic, two of the three remain unresolved after
21 nine months. It's unknown where the fault lies, but --
22 he goes on.

23 Have we had resolution -- this was as of
24 January. Where are we on those, two of those three
25 unresolved cases? Do you know where we are? Can you

1 give me an update?

2 MR. SAUCEDO: Your Honor, this is something
3 that we do want, need to talk to the city about, because
4 Dr. Ginger observes that the city takes his reports, has
5 taken his reports as water under the bridge. In other
6 words, we move on to the next set of incidents, the next
7 sample of incidents. And he has emphasized the need to
8 go back and see what action APD took in response to
9 these incidents.

10 We agree that it's taken a very long time. We
11 need to find out from APD what action was taken with
12 respect to these two of the three incidences where he
13 says are outstanding. The Monitor doesn't -- in
14 reviewing these incidents, doesn't resolve the incident.
15 There is no disposition of the incident. That takes
16 place by action that's taken by the city. And so it's
17 important for us to circle back and find out what
18 happened to those cases.

19 THE COURT: Finally relating to this, the
20 special orders. I don't have the particular number in
21 mind, but there was one reference this morning, that the
22 city allegedly denied its existence and when they saw
23 the minutes, they said something else about it. But it
24 -- I'm told, in some of these materials, that the
25 content of that order ran counter to some of the

Page 104

1 provisions of the CASA.

2 So the fact that APD gets to manage itself as
3 it feels best, so long as its complying with this
4 agreement, and that's troubling to me. Do you know
5 about the specifics of the order that was referenced
6 this morning?

7 MR. SAUCEDO: Yes, your Honor. That special
8 directive changed the number of recordings that would be
9 reviewed by a supervisor. The policy that was approved
10 through the policy review process required that a
11 supervisor look at, on a monthly basis, review lapel
12 video of officers, of all officers in the unit. And the
13 change that was made was that he would -- that the
14 supervisor would only look at a smaller number of those
15 per squad. So not every officer, but a sample of
16 officers in the squad.

17 This relates to Paragraph 220 G in the CASA,
18 where supervisors are required to review recordings
19 regularly and to incorporate the knowledge gained from
20 the review in their ongoing evaluation and supervision
21 of officers.

22 And so, we understand that this presented a
23 workload issue for the city. We have been working with
24 the city as part of our discussions. This issue has
25 come up in our weekly meetings, and what we're seeing is

1 there are some underlying legitimate issues about the
2 workload and the burden on supervisors as part of this
3 process.

4 We do want to make sure that we're not
5 oversaddling our supervisors where they aren't able to
6 go out into the field or to think about the incidents
7 that they're coming across. So we're working with the
8 city to try and address that specific issue.

9 We're also working with the city to make sure
10 that the special orders are brought to Dr. Ginger's and
11 the parties' attention early on, and that Dr. Ginger
12 doesn't have to sift through or come across something by
13 happenstance. That is something important and something
14 we're going to be looking for with the city and
15 Dr. Ginger.

16 THE COURT: So when this particular order, its
17 existence was brought to the attention of the city, are
18 you aware of their response? Did they say it doesn't
19 exist until they drilled down some more? Is that true?
20 On the reduced review, at the sergeant level or whatever
21 it was, of the on body recording devices, did the
22 city -- see, it's okay for them to prepare their orders,
23 but it's not okay to say they don't exist when they do,
24 and in fact, it contradicts elements of the CASA.

25 So that's what I'm concerned with. Not the

Page 106

1 fact that there might be excessive work required of the
2 supervisors. Of course, we have to be sensitive to
3 that. But we don't get to -- the city doesn't get to
4 say because it's hard, we're going to do it differently
5 and we're not going to tell anybody about it. That's my
6 concern.

7 MR. SAUCEDO: Right. Your Honor, Dr. Ginger
8 did say that when he asked about this special order that
9 it got the response that you just articulated, your
10 Honor. My understanding is the city is not taking issue
11 to contradict that.

12 THE COURT: We'll hear from the city after
13 lunch. So actually, I guess in terms of the agenda that
14 the parties agreed to, we'll hear from APOA right after
15 lunch, and then the city following that. And we will be
16 in recess then until 1:15. Thank you all.

17 (Recess taken from 11:59 to 1:15 p.m.)
18
19
20
21
22
23
24
25

1 RESUMPTION OF HEARING

2 1:15 p.m.

3 THE COURT: I think we're to that point in
4 the process where I'm going to hear from
5 Mr. D'Amato.

6 MR. D'AMATO: Thank you, Your Honor. On
7 behalf of the Albuquerque Police Officers'
8 Association, we'd like to thank you for the
9 opportunity you've given us, not only to address you
10 today, but also take part -- allowing us to take
11 part in the process of getting to full compliance.
12 So we want to thank you for that opportunity.

13 We would also like to thank Dr. Ginger
14 and his staff for the amount of -- of work that he's
15 put into this process, getting us to this point, and
16 as -- of course, as well as the City of Albuquerque
17 and the Department of Justice.

18 I thank the last two, in part, as a
19 formality but, also, Your Honor, to dispel any rumor
20 that these folks -- the parties, the Amici --
21 Amici -- are not taking part actively in this
22 process.

23 I have been involved in this process
24 for the last 60 to 90 days officially, and I have
25 not seen any evidence of either a party or a vested

Page 108

1 interest of the -- of a community member, a
2 non-profit group, that -- that's addressed this
3 Court this morning. I believe every one of those
4 folks and organizations have worked diligently to
5 get to, not just compliance, but get to a working
6 operational system that can work at the highest
7 levels with the chief and his command staff as well
8 as the new recruit coming out of the Academy.

9 And that's what the Albuquerque Police
10 Officers' Association's -- Association focus is on,
11 the -- the officer coming out of the Academy that
12 will be impregnated with the first two requirements,
13 his safety and community safety. Those are the two
14 elements that drives the APOA primarily when we
15 review these policies.

16 Those are the things that we want to
17 see implemented that ensures a safe community and a
18 community that feels safe. I don't think we're
19 there today, with a community that feels safe, for a
20 variety of reasons.

21 I do want to dispel some
22 representations made to you this morning. Minor
23 ones but important for the Court to understand, as
24 well as those folks in the community. The first one
25 primarily is, there is no deliberate indifference

1 that I have seen on the part of the City, on the
2 part of any police officer, any supervisor, or
3 command staff.

4 Now, this is a difficult process,
5 getting to where we need to be. It's very difficult
6 and highly charged. Parties take certain positions
7 that are not necessarily irreconcilable but they
8 come from different perspectives.

9 The one word that I can think of to
10 advise you of why this disconnect occurs is the
11 subjective nature of the English language. Now, we
12 talked about, earlier, about a neck hold. The Court
13 Approved Settlement Agreement provides the
14 definition of a neck hold. Making the jump from the
15 CASA, if you will, related definition for "neck
16 hold" into a workable policy is the product of so
17 many different viewpoints. What may be a neck hold
18 to you when you view a lapel video is not
19 necessarily a neck hold that falls into the official
20 definition of, not only the City policy, but of the
21 Court Approved Settlement Agreement. So that's, in
22 part, where the disconnect occurs, when we subject a
23 person's subjective view of a set of facts.

24 One of the reasons that occurs, in a
25 minor way, is the shift, or the drifting, I call it,

Page 110

1 away from the objective reasonable officer standard
2 enunciated in Graham vs Connor. There are many
3 excellent points that IMR-5 make with regard to the
4 police department.

5 But I think the APOA's concern is that,
6 once you start injecting subjectivity into an
7 analysis, you're all over the board. And when the
8 Monitor phrases that something in his report that
9 says use of force, Graham vs Connor should be one of
10 the other factors -- one of many factors that one
11 should consider. And, so, the many factors are
12 taken by other folks to say, "well, subjectively, I
13 believe that's excessive use," and so we get into
14 chasing rabbit holes with regard to definitions.

15 And, so, from the beginning,
16 Mr. Mowrer, on behalf of the APOA, has tried
17 valiantly to eliminate the ambiguity in the use of
18 definition in terms. And, again, I bring in the new
19 recruit coming onto the street with it, should be
20 simple for him or her. They should be able to look
21 at a policy and understand it readily. And that's
22 the transition we're getting to.

23 And part of the delay, as you know,
24 with some of the policies that the APOA has been
25 working with the City and the Department of Justice

1 on, is the meaning and intent of the language used.
2 It may work today but it may not work with the next
3 administration, or it may result in an ambiguity
4 that could result in the depravation of a
5 promotional policy, something that's important to
6 develop our troops coming up.

7 The Court, thankfully -- and I
8 appreciate the comment it made with, I think it was
9 Mr. Saucedo's presentation, that you should be
10 concerned -- we all should be concerned with
11 staffing issues.

12 So, currently -- it's almost like we
13 were talking at lunch and, sure enough, you have a
14 plate representing the Sergeant's responsibility
15 before the Department of Justice and the consent
16 decree was entered with a lot of responsibilities.
17 Now, we're putting more and more responsibilities on
18 these sergeants, these first-line supervisors. I
19 think -- respectfully, it is our opinion, when doing
20 so, we lose sight of what a Sergeant's role is. A
21 supervisor -- a front-line supervisor's role is to
22 keep his community safe with regard to response to
23 crime reporting, to keep his officers safe, and,
24 then, administration.

25 But I think we -- there's a perception,

Page 112

1 at least, that the priorities have been flipped a
2 little bit and you'll see this in future policies.
3 Right now, for example, when discussing the First
4 Amendment assembly policy, you can read the entire
5 policy and it's focused on the -- the respect for
6 the folks assembled, respecting their First
7 Amendment rights. As long as it's lawful, they have
8 the First Amendment right.

9 There's nothing, really, to drive an
10 officer in the field with some confidence to say,
11 "Hey, this policy balances the interest between a
12 citizen's right and an officer's safety." So that
13 will always be a discussion, whether there's a
14 consent decree in place or not.

15 One of the other representations made
16 to you, which is just flat wrong, a distraction
17 strike is not a strike to the head. A distraction
18 strike -- I don't think there's anyone in this room,
19 at the tables, by the parties, would -- they would
20 not disagree that a distraction technique is a use
21 of force, clearly.

22 The breakdown occurs, in our opinion,
23 when you inject a subjective evaluation of whether a
24 strike may or may not be a serious use of force,
25 reportable use of force. And that's where, when we

1 take the definition terms and try to implement them
2 into the reality, I think we're forgetting -- we're
3 not calculating the human nature side of this, that
4 one command -- one area commander may do an
5 excellent job in implementing the policies with -- a
6 certain way. I think it would be an unsafe, or a
7 dangerous position to take, that that's the formula,
8 that's the algorithm that works and it will work in
9 every area command.

10 Each commander in his or her area
11 command is unique and they bring their own world
12 experiences to that job, to that position. And just
13 by definition alone, I don't think you'll have a
14 consensus, unless we look at the objective standard
15 enunciated in Graham vs Connor.

16 So, if we get a shift away from that
17 recognized standard, I think we're creating more
18 problems than -- than necessary.

19 The third -- again, I think I touched
20 on this -- was that, for someone to suggest
21 non-involvement -- for example, I think, if I
22 remember correctly, the Office of Policy Analysis --
23 I can't remember a meeting that either the APOA
24 attended at least with one person, or a City folk
25 were there -- I don't remember -- and Mr. Mowrer, I

Page 114

1 know was there, as well as APOA. So to suggest to
2 the Court, and to others or to the community that
3 the City of Albuquerque, or the Albuquerque Police
4 Department or any other party, DOJ -- not involved,
5 we don't care, we're indifferent to the endgame or
6 the goals of the CASA, is not only untrue, it's just
7 not fair to leave that impression with this Court
8 and the community.

9 I appreciate the APOA appreciates the
10 work Dr. Ginger and his staff did with regard to
11 this report, both in terms of the actual number
12 aspect, the analytics, if you will, and also
13 recognizing some of the realities of staffing and
14 things like that.

15 There was some discussion, earlier,
16 with regard to the Sergeant's review of videos.
17 Well, if you take away today's discussion -- take
18 away from the discussion the issues that have been
19 resolved since the last meeting, within the last 60
20 to 90 days, I think the -- the transcript of this
21 hearing would probably be cut and a half because
22 what you heard today was, "This used to be a
23 problem, your Honor, but it's fixed. This used to
24 be a problem. Now, the communication is greater."

25 And, so, I think, prospectively, we are

1 on the right path -- the Albuquerque Police
2 Officers' Association, the Department of Justice,
3 and the City of Albuquerque Police Department, we
4 are on the right path, and I believe, at least to my
5 experience, no one has shirked their responsibility
6 and, if anything, it goes to the other extreme.

7 An informal poll will probably reveal
8 that we're spending overtime -- DOJ overtime, City
9 of Albuquerque overtime, legal department as well as
10 the APOA -- trying to reach a resolution on certain
11 issues that pop up.

12 One of the Amici indicated that success
13 can't happen unless we have direct involvement by
14 the Amici. I submit to that we can have the
15 involvement of every community organization from the
16 moment the process started to the endgame - 110%
17 involvement -- but we're not going to solve the
18 underlying problem until we have the staffing issues
19 resolved.

20 I think you'll hear from the City that
21 supervisors -- they're short. They need sergeants
22 on the street. They need people and they're
23 doing -- the City of Albuquerque is doing everything
24 they can with regard to recruiting. But when we see
25 recruiting -- for example, 74 hired, 68 left and

Page 116

1 retired so we have a net gain of three or four,
2 that's not going to work. That's a formula that
3 does not suggest that we're going to come up with
4 policy-first compliance. Second-level training,
5 we're there. But when we get to the operational
6 phase, that's what the APOA represents, the folks in
7 the street trying to implement that which they've
8 learned through the Academy and the training.

9 So just keep in mind that there's a lot
10 of human frailty here. There's a lot of human
11 subjectivity. There's a lot of different folks
12 coming at this problem with their own perspective,
13 education, training, background, and experiences.

14 It's not going to be easy to reach
15 resolution but I think that it is doable. And I
16 think that the next report you will see, I would
17 like to think, Dr. Ginger can make a little shorter,
18 but -- but -- and the table's helped. But I think
19 along those lines, you'll see much more progress
20 made in the next report, in the next six months.

21 The body camera issue may not be that
22 big of an issue once the parties have exhausted the
23 negotiations and discussion about the language.
24 Again, we're looking at the language that is
25 correctly implemented in a policy that will avoid

1 safety issues in the future, liability issues, and
2 potential problems from within the Department, as
3 far as discipline, and appealing, to -- so that it's
4 avoided by the use of clear terms and not ambiguous
5 terms.

6 Very clear definitions, allocation of
7 scarce resources, and getting the numbers up in the
8 field will help alleviate some of the perceived
9 problems. But I do not want this Court left with
10 the impression that the parties are not working
11 diligently to get to where they need to be.

12 We're going to disagree. The APOA, the
13 Albuquerque Police Officers' Association, will
14 disagree with the City on certain things, DOJ on
15 certain things. It's no secret that we did not
16 believe that there was a need at the time -- at the
17 close of the Department of Justice's investigation.
18 There was no pattern and practice; there's
19 certainly, we believe, not a culture of violence.
20 But I can assure you, today as we stand here, if
21 there was a culture of violence today, that --
22 today, that culture is extinct. I don't think we
23 have that approach today. I don't think that is
24 imprinted in the community.

25 (Note: Comment made from gallery.)

Page 118

1 There was one other comment made
2 about -- one other --

3 THE COURT: Mr. D'Amato -- you know what,
4 I don't want to hear any comments from the gallery,
5 that's inappropriate. And I -- it is distracting
6 and I'd rather you save that for a proper forum.
7 This isn't it. Mr. D'Amato, please.

8 MR. D'AMATO: One other point -- and I'll
9 close in a minute -- was that the culture of
10 violence is gone. Although we have objected to the
11 entry of the Court Approved Settlement Agreement,
12 today we're part of that and we're doing everything
13 we can to comply with the terms.

14 I just think that, two years after its
15 entry, the City has made great progress -- great
16 progress given the scarcity of resources. And I
17 think the scarcity of resources will be seen in the
18 future when we're overloading supervisors with
19 work -- administrative stuff. Yes, there's a
20 need -- there is a need to review and to supervise
21 and bring it up the chain, but I think -- I do not
22 want to set the supervisors up for a failure for
23 failing to comply with that which is required.

24 After we have reached total compliance
25 on all three levels, the Department of Justice will

1 leave this jurisdiction, as far as this case goes.
2 As was indicated earlier, the City of Albuquerque
3 will have new management in, operating with new
4 leaders, but the officers that are members of the
5 Albuquerque Police Officers' Association will still
6 be here, and long after everything is settled.
7 Those police officers will be responding to calls,
8 taking calls, and dealing with the community. And
9 I'm hopeful that everyone will work in some sort of
10 tandem agreement to get to where we need to be.

11 So I thank the Court again, and I thank
12 Dr. Ginger and his staff for the work that they're
13 doing. Thank you. Any questions, Your Honor?

14 THE COURT: Not any -- no questions,
15 Mr. D'Amato, but I -- I just think it's fair comment
16 that all of our focus today has been on the report,
17 IMR-5, that concluded its period of analysis in
18 January of this year. So -- so there may well have
19 been considerable progress -- I hope there's been
20 progress since then. So, thank you, Mr. D'Amato.
21 Who's got the ball for City? Ms. Espinoza?

22 MS. ESPINOZA: Your Honor, I'm Celina
23 Espinoza. I am the communication and community
24 outreach director for the Albuquerque Police
25 Department. My job is to take what APD is doing and

Page 120

1 be able to break it down and clearly communicate
2 that to the community and give them updates and
3 answer questions and be able to help with that.

4 Paragraph 261 of the CASA states that
5 APD will host a community outreach meeting
6 semiannually in each of the six area commands to
7 update progress compliance and answer questions.

8 So I'm going to give you the
9 presentation that we gave at each of those area
10 command meetings -- a little bit in brief so that
11 you're not here for an hour -- and simply so that
12 you can see what the community has been informed of
13 as to APD's progress.

14 The first was -- this slide was simply
15 a slide that Chief would like us to address because
16 we had been getting lots of questions of what
17 happens on the national level with the new -- new
18 leadership in place.

19 And it's simply that APD is committed
20 110% to this settlement agreement. It's something
21 that we have great ownership of and that if there
22 was something that -- that APD was no longer bound
23 to the settlement agreement, we would still be
24 committed 110% to everything that's written in that
25 agreement, just to reassure the community that this

1 is something that we -- we truly believe in and
2 every reform written into that agreement is
3 something that we value and that we want to see to
4 fruition.

5 Where are we today? APD has currently
6 met all of the Court Approved Settlement Agreement
7 deadlines when it comes to training and policies.
8 We talk a lot of about training. Policy was the
9 first step; training, the second step; now, we're in
10 the operational phase or "is it working" step.

11 We approved, and the parties all
12 agreed, on 37 new policies, which are now currently
13 being reviewed. And all the CASA-related training
14 has been completed and we are currently working on
15 updates.

16 We're also working on new technologies
17 and job aids to help with some of the supervision
18 concerns that the monitoring team has.

19 We're really focused on bringing
20 accountability to officers' application of use of
21 force and supervisory use of force.

22 When it comes to policy, we're
23 currently reviewing what we call the "use of force
24 policy suite." So that's anything that has to do
25 with on-body cameras, electronic control weapons,

Page 122

1 our standard use of force policy, and that
2 supervisory use of force policy.

3 We've also updated some of our training
4 to address concerns when it came to show of force,
5 to make sure it's clear to the officers what that
6 means, how it's classified, and, then, communicated
7 to the community of what we are documenting, what a
8 show of force looks like and how we are tracking
9 that and how that data helps the Department learn
10 from the outcomes on the streets.

11 We're also tracking that when it comes
12 to our electronic control weapons, our tasers,
13 because as we've heard, over and over today, taser
14 is one of the highest levels of force that the
15 Department can use and we take that very seriously
16 and hold it in high regard.

17 We asked one of the local media
18 stations to come in -- they've been -- one of the
19 stations that has been most critical of the
20 Department's reform efforts -- to actually observe
21 and witness and take part in our use of force
22 training. We wanted the public to be able to see
23 what it looks like from an unbiased perspective.

24 So -- lots of times, we have officers
25 talk about their training but they don't -- the

1 public didn't get an opportunity to go through that
2 class but -- to look take at it -- so we asked a
3 reporter who's been very critical of the way the
4 Department has handled these reform efforts to come
5 in, look at that, and then present a piece on that.
6 So we showed that video to the community.

7 When it comes to new technologies to
8 help with supervision and use of force reviews,
9 we've implemented the BlueTeam technology, which --
10 I describe it as a big bucket, making sure that all
11 pieces of that use of force investigation are in
12 that bucket and that the supervisory chain can see
13 and access that bucket at all times to make sure, is
14 there a video, was this form properly filled out,
15 did the officer give the proper testimony and
16 witness conclusions, and were the proper questions
17 asked by supervisors on all levels.

18 So that use of that technology has
19 helped make sure that those investigations are not
20 only standardized but make sure that it gives our
21 supervisors a path and a direction of what needs to
22 be required within those investigations.

23 We've also implemented some things and
24 tools to help them ensure that they're communicating
25 directly with the officers on that first line, and

Page 124

1 then on up, including an additional concern memo
2 which can get kicked back to that officer, or that
3 chain, multiple times to make sure that we're
4 documenting and tracking what's being identified,
5 where there are deficiencies and how they've been
6 corrected.

7 And, then, employee work plans. This
8 is something that they do in the private sector and
9 something that we decided that needed to be done
10 within our agency.

11 We know that there are going to be
12 certain officers who might be "B" cops all of their
13 lives but what are their goals to their career? If
14 they plan to stay in the southeast, work the
15 southeast and be on the same shift for 20 years, we
16 want them to have goals when it comes to that
17 long-term career, even if it's not promoting, just
18 goals within their -- their own -- their own
19 development. Making sure that they're not being
20 stagnant.

21 We've also implemented other job aids
22 when it comes to inspections and different things
23 that the officers are required now to do per the
24 CASA. And some of those forms are inspection checks
25 for -- simple uniform checks to taser cartridges and

1 expiration dates, and making sure that cars are
2 clean, and they have proper complaint intake forms.
3 We're standardizing those processes so supervisors
4 know what's required and the community knows how
5 we're holding our department accountable to that.

6 We've discussed much about the Use of
7 Force Review Board, and we went over this with the
8 Community Policing Councils, that every serious use
9 of force is reviewed by this team. They review all
10 critical incident review team investigations and
11 they are now doing samples of supervisory
12 investigations.

13 So making sure that we're auditing,
14 essentially, those supervisors' investigations at a
15 random level and they're meeting above and beyond
16 what they had been prior to this reporting period.
17 So they're meeting about every two weeks, because
18 the case load is that vast and we need to get
19 through those cases and make sure that we're looking
20 for all of those concerns that the Monitor had
21 pointed out.

22 We discussed how they're comprised,
23 who's on that board, and that the Civilian Police
24 Oversight Agency is a main extension of that board,
25 and that the Civilian Police Oversight Agency and

Page 126

1 the Police Oversight Board also reviews use of force
2 cases independently. So you have an additional
3 level of oversight just besides what the police
4 department is doing internally.

5 When it comes to new training, we've
6 implemented some supervisory training, or leadership
7 training, because a lot of training that the
8 officers get is very much surrounded per policing.
9 But we wanted to give them different leadership
10 skills and leadership skills that might be out of
11 the box and -- this was at the suggestion of
12 Dr. Ginger, that we implement this Six Sigma-type
13 process within the police department.

14 So we asked outside agencies within our
15 community to come in and give some of this
16 leadership training. And we've built wonderful
17 partnerships within our community to make sure that
18 we're giving our officers leadership skills, and
19 we're developing those skills and honing in on them
20 and improving our process, whether that be data
21 collection, the way we respond to calls for service,
22 the way officers review their own cases, and looking
23 for any inefficiencies to make them more efficient
24 on the streets, and, then, that service is better
25 used for the public.

1 We've also done training for this
2 reporting period on the complaint intake forms and
3 investigations so that when any citizen wants to
4 make a complaint, the officer is well versed on how
5 to direct the citizen to do that and help them
6 through the process and, then, where that complaint
7 should go. So ensuring that they're familiar with
8 that process.

9 We've also updated our field training
10 officer program -- which you've heard about today --
11 and just making sure that everything that that
12 now-graduate from the Academy is held accountable to
13 is based on the core values of the Albuquerque
14 Police Department.

15 This reporting period, we developed a
16 really unique training for APD and it was based
17 around cultural sensitivity and ensuring that we are
18 preventing any sort of possible development of
19 biased-based policing. That, we asked a panel from
20 an outside group put together by one of the task
21 forces within our City to bring together cultures
22 that are widely represented in our City.

23 So we looked at the Hispanic community,
24 the Native American community, the Asian American
25 community, and -- our African American community,

Page 128

1 and asked them to bring their own perspectives of
2 policing from a cultural standpoint within their
3 ethnicities and, then, to discuss the ways that they
4 have differences in communication styles. So
5 that -- if an officer is interacting with an
6 individual, they can be more sensitive to the
7 different types of communication mechanisms that
8 maybe certain cultural groups would have and
9 understand the family structures and their own
10 individual histories of policing and we will have
11 better outcome and interactions.

12 We're also working to diversify that
13 training to include the transgender groups and
14 different religious ethnicities within our
15 community, so we're not just looking at simply
16 cultures, that we expand this across all kinds of
17 different diversity groups.

18 When it came to mental health, we did
19 take this into -- to heart that, in the last report,
20 Dr. Ginger mentioned that he really wanted us to
21 focus on mental health and the outcomes. And I
22 think that you've heard today here, that those
23 outcomes have greatly improved and that's something
24 that the Department is very proud of, that all of
25 our officers are now crisis intervention trained --

1 which is additional training besides what the State
2 requires -- that we have an up-and-going crisis
3 intervention unit that is specifically working to
4 proactively help families and address issues and do
5 proactive policing in that community based policing
6 where we're giving them tools and resources, and
7 making sure that the right people are talking to
8 each other to prevent calls for service that could
9 increase escalations or situations that we -- we
10 might not want to see, the most favorable outcomes.

11 We also -- our crisis outreach and
12 support teams have grown and are moving forward, and
13 those are comprised of civilians. So our behavioral
14 health specialists and our clinicians, they work
15 hand-in-hand with the officers so that it's not just
16 a police officer responding to that crisis situation
17 or that individual that we know has -- or might not
18 have a diagnosed behavioral health diagnosis but
19 that we have interacted with in the past. So we're
20 building those relationships and making sure that
21 they're getting the resources that they need.

22 We talked a little bit -- you heard a
23 little bit about the mobile crisis teams and that
24 some of the Amici would like them to see less --
25 them be less police-driven, and that's exactly the

Page 130

1 goal of them. They are comprised of Bernalillo
2 County, New Mexico State Police, Valencia County,
3 members from UNM, and our Family and Community
4 Services Division within the City.

5 So it's an officer that goes to ensure
6 that those agents are protected, but that it's the
7 interaction of resources with the individuals as
8 part of that mobile health crisis team and -- and,
9 really, that proactive approach just, making sure
10 that families know what the resources are and that
11 we're getting individuals help.

12 We also told the community that we do
13 have the goal of making sure that 40% of all field
14 officers are enhanced crisis intervention trained
15 and that's something that we're very dedicated and
16 committed to.

17 We've talked about MHRAC and our
18 partnership with them and how wonderfully they're
19 doing. I don't think you need much more on that.
20 But for officers, we just hired a former police
21 officer to help with some of, maybe, behavioral
22 health issues that police officers would have after
23 a -- big incident or a -- arrest investigation
24 that -- that was hard or difficult for an officer to
25 deal with, making sure that they have resources so

1 that the outcomes on that next call are much more
2 positive, as well.

3 We've also hired a peer support
4 coordinator to ensure that these teams, if they
5 don't feel comfortable going to a clinician or a
6 physician, that they have somebody within the
7 Department that they can talk to and address
8 problems with and workout mental health situations,
9 or just need peer support.

10 We looked at mental health outcomes.
11 So from January through October of 2016, APD
12 responded to 2000 calls about -- that were some form
13 of crisis intervention related. Of those calls,
14 about 1600 of them resulted in jail deference or
15 hospitalization.

16 So, that big red piece, 77% of them had
17 no arrests, and that's hooking these individuals up
18 with resources and being able to help provide
19 alternative outlets and support that individuals in
20 our community might need.

21 The next piece of the pie is 9%. And
22 189 of those calls resulted in no transport, which
23 means that the officers were able to resolve the
24 situation on scene, work with the family members,
25 work with the individual, get that crisis averted,

Page 132

1 and get the situation peacefully resolved.

2 175 reports are -- or about 8% -- are
3 still in-process, or they're working with our COAST
4 team. So they've been assigned a case worker and
5 we're working those cases protectively and making
6 sure that we're keeping contact with those
7 individuals.

8 Fifty-seven of those calls, or about
9 2%, were suicide-related. Now, that doesn't mean
10 that the individual committed suicide, we just
11 classified "suicide" differently because it's not a
12 crime. And, then, of the 2000 calls, 34 of them, or
13 about 1.65%, did result in an arrest or a detention.

14 Now, of those 2000 calls, only in 6 of
15 them was there some sort of force used. Now, that
16 doesn't mean serious use of force, it's the basic
17 level of force all the way through. So about 99.7%
18 of our calls when dealing with mental health issues
19 resulted peacefully in the streets and being able to
20 help in the proper way.

21 We've talked a little bit about the
22 Office of Policy Analysis. They are currently up
23 and running. They've received 45 recommendations
24 from community stakeholders, or people in the
25 community that tried to submit them. And of those

1 45 recommendations, 47% of those recommendations
2 were accepted by the Department. So about half of
3 the recommendations that we're getting from the
4 community, we're able to implement and really,
5 truly, put into policy.

6 APD is one of the only departments in
7 the nation where, literally, anybody in our
8 community can review a policy, write in a comment,
9 ask for it to be put into policy, and then get
10 direct response back from our Department. And
11 that's the commitment, is -- if you take the time to
12 write us what your concern or your suggestion within
13 a policy, is we'll take the time to make sure that
14 you know what the outcome was, whether it got fully
15 adapted, partially adapted, or why it was not
16 adopted.

17 When it comes to staffing, we've
18 increased our graduation rate by more than 400%
19 since 2010. It's a stat that we're very proud of.
20 We graduated 93 recruits last year. That's the most
21 in more than a decade and we're really, truly
22 working to increase our staffing levels.

23 You have -- know that the staffing plan
24 was published in June of 2016, which has our
25 allocation for resources and how we see the goals of

Page 134

1 the Department once fully staffed, and then those
2 are our numbers for where we stand -- this was last
3 month -- of the total sworn and where they're
4 allotted.

5 We've also increased the PSA, or Police
6 Service Aide, program to help with a stepping stone
7 for recruitment and ensure that we're opening doors
8 to individuals and getting to them early so that
9 they can make the best possible police officers in
10 our community.

11 We've discussed the ratio of sergeants
12 to supervisors so I'll skip over that one. And,
13 then, we'll touch a little bit on your Community
14 Policing Councils. Because APD believes that, if
15 the reform efforts, the settlement agreement, is
16 done, we are compliant in all measures, it'll be the
17 Community Policing Councils that hold us accountable
18 to the reforms that we've already implemented. And
19 we really expect the community to hold us
20 accountable to what APD has said it will do and will
21 continue to do, no matter which administration might
22 be in place.

23 So one of the things that -- that we've
24 really committed to is, we -- we -- Chief Eden wrote
25 a letter stating that the Community Police Councils

1 are here in Albuquerque -- here to stay in
2 Albuquerque and that they're a very, very important
3 arm and extension of policing in our City.

4 We've made sure that our website has
5 the proper minutes and notations and development
6 there. We hired a coordinator -- which you met, I
7 think at the last meeting -- and then we've also
8 done lots of advertising to help people get involved
9 in this process and have a place to come to voice
10 their concerns, ask questions of the officers, learn
11 about our policies and, really, what's going on
12 within the Department.

13 When it comes to community engagement,
14 we've opened our social media platforms to allow for
15 questions and answers. We know that not everybody's
16 going to feel comfortable with face-to-face with a
17 police officers and asking a question so you can,
18 literally, do it online. Anybody can send us a
19 message, ask us a question, ask where their report
20 is, ask why the police officers need a Use of Force
21 Policy, what that means to our Department, and they
22 get a direct response from either an officer or a
23 member of my team to ensure that that communication
24 is open and ongoing.

25 We've also launched different programs,

Page 136

1 whether that be Coffee with a Cop or different
2 outreach programs, so that they can have
3 face-to-face interactions with our -- our Department
4 and ask questions.

5 Officers are also now using a new
6 10-code, a 751, when they go to community meetings
7 or interactions so that we can track what types of
8 meetings they're going to. Are we spending more
9 times in schools or more times with neighborhood
10 associations, or do we need to go to more sporting
11 events, whatever it might be, to ensure that our
12 community outreach is broad and extensive and what
13 the community would like it to be.

14 Some of the stats from this -- this
15 period that I think will be of note to the Court is,
16 our officer-involved shooting have decreased 53%
17 from 2010, and the numbers are there. And our
18 overall firearms discharges have decreased 72% from
19 2010. So those are both data points that we are
20 very, very proud of and that the outcomes are -- are
21 there for the community to see what it looks like
22 when it comes to data within APD.

23 And that's all I have for you.

24 THE COURT: Thanks, Ms. Espinoza. Thanks

25 very much. Chief Eden?

1 MR. EDEN: Good afternoon, Your Honor.
2 Since May of 2014, I'd just like to give you an
3 update on some of the things that have happened
4 within the Albuquerque Police Department. Twelve of
5 the fourteen APD commanders that have been promoted
6 since June of -- I'm sorry, since May of 2014 have
7 been promoted into those positions fully aware of
8 the -- the CASA, the settlement agreement. Since
9 2014, the promotional process is now included in the
10 promotional -- the CASA is included in the
11 promotional process.

12 In 2016, the Albuquerque Police
13 Department promoted 25 new sergeants and a new group
14 of lieutenants, all who have great knowledge and
15 leadership skills but, more important, are committed
16 to the CASA.

17 I can report to the Court that APD has
18 graduated well over 100 cadets who have been trained
19 in all of our new policies to include new use of
20 force policy suite in addition to the many elements
21 of the CASA.

22 Why should that be important? In my
23 visits to both Las Vegas in Los Angeles, and in
24 meeting with other departments that have been under
25 a settlement agreement or a content decree, they

Page 138

1 said it's very important to stress all your new
2 policies and all your new procedures to each and
3 every single recruit, make sure that those practices
4 and policies are clearly implemented in your field
5 training officer program, that is the way you will
6 sustain your efforts. That's what the Department
7 has done.

8 In addition, the Academy staff has
9 worked with great commitment to identify training
10 gaps between the training Academy and the
11 application of what they've learned in the Academy
12 to the workplace.

13 The Academy staff works closely with
14 our field training officers, and our field training
15 officers' supervisors, to make sure that we take
16 immediate corrective action when it is needed.

17 These efforts by the Academy staff and
18 the field training officers are critical to the
19 long-term change that is needed within the
20 Albuquerque Police Department.

21 I would like to also inform the Court
22 that APD continues to include the critical elements
23 of the CASA, and we were developing our 2017
24 Sergeant's examination, making sure that the
25 critical elements are tested and included in the

1 interview process, the testing process, and also
2 into the realistic components of the assessment
3 center.

4 In the next few months, APD will have a
5 new budget and within that budget request is a study
6 to determine workload measures and outcomes for our
7 sergeants.

8 Paragraph -- I'm sorry, Your Honor.
9 Paragraph 207 requires an 8 to 1 ratio of sergeants
10 to officers.

11 We believe that that ratio is a good
12 ratio. However, based on some of our preliminary
13 analysis, we need to make sure that our sergeants
14 are successful and that they need the resources to
15 be successful, also. That ratio may change but it
16 will not drop or become different than what is
17 required in paragraph 207.

18 In the past months, the Albuquerque
19 Police Department staff has had one-on-one contact
20 with the Los Angeles Police Department, Seattle
21 Police Department, and New Orleans Police
22 Department. I have personally made contact with the
23 leadership of these departments, as well as Las
24 Vegas Metropolitan Police Department, Portland,
25 Oregon police Department, and Oakland Police

Page 140

1 Departments. Together, we share our concerns about
2 the successful implementation of these agreements.

3 The men and women of the Albuquerque
4 Police Department respond to approximately 2000
5 calls for service each day. These calls involve
6 various situations. Some may appear to be minor,
7 some may be serious. In domestic violence calls,
8 there may be underlying issues, from living
9 conditions, the people needing food, or other
10 special needs, child care issues, or mental health
11 issues.

12 Officers are required to take the
13 appropriate action given the facts of the case. The
14 officers are charged with the responsibility to
15 investigate each and every domestic violence call.
16 If a battery or assault takes place, an arrest is
17 warranted. Officers have a duty to remove the
18 threat and take the appropriate enforcement action
19 at these domestic violence situations.

20 One of the things that we will continue
21 to do is continue to evaluate all of our use of
22 force investigations. In my dealings with both Las
23 Vegas, Portland, Oakland, and Los Angeles, their
24 original model has changed. The goal is to have
25 successful, complete, and accurate use of force

1 investigations.

2 We are now into the sixth-month policy
3 review process. I want to make it very clear to the
4 Court, under the definitions within the CASA, on
5 page 12, definition GG, is a very clear, concise,
6 and easy to train definition of a neck hold. And in
7 that definition, which was carefully crafted by the
8 parties, it says "Neck holds shall be considered
9 lethal force." Our police policy does not deviate
10 from that definition.

11 The Use of Force Policy was approved by
12 the parties and the Monitor in January of 2016.
13 There has not been, nor has there been, any
14 resistance by the Albuquerque Police Department when
15 it comes to the definition of a neck hold.

16 APD continues to acknowledge the hard
17 work and the input from the many volunteers who are
18 helping the Albuquerque Police Department through
19 the reform process.

20 The volunteers include members of the
21 CPOA, the POB, the CPCs, MHRAC, all of which we
22 consider to be very valuable partners and a very
23 important part of our community and to the APD
24 reform process.

25 Your Honor, the Monitor and his team

Page 142

1 will be in Albuquerque for another site visit in
2 June and we look forward to working with Dr. Ginger
3 and his team as we continue to move forward in our
4 reform process. Thank you, Your Honor.

5 THE COURT: Thank you, Chief.
6 Ms. Hernandez?

7 MS. HERNANDEZ: Good afternoon, Your
8 Honor. Thank you for your time this afternoon.
9 And, also, thank you to the parties and the Monitor
10 and -- as well as members of the community that have
11 been with us today and for taking the time to do
12 that.

13 I know that there has been a lot of
14 information presented today and I couldn't possibly
15 address all of it but I want to spend a few minutes
16 talking about the -- the progress the Department has
17 made, some of the challenges we are facing, and our
18 plan as we move forward as well as answer some of
19 the questions the Court has already raised and any
20 additional questions that you might raise, as well.

21 I first want to make -- want to start
22 by saying that while we recognize that there is a
23 significant amount of work ahead, I think that there
24 has also been a lot said today about the tremendous
25 progress that has also been made.

1 And I wanted to -- to say that we
2 really appreciate Dr. Ginger and the other parties
3 working together with us on a couple of things in
4 the format of this report, which Mr. Saucedo also
5 referred to. Those two things were starting to
6 include the tables that would show, in terms of the
7 percentages, where we are. Because, as -- as you
8 know, and as -- as the monitoring team has been
9 working on overtime, our bar is 95%. For every
10 paragraph in the settlement agreement, we are trying
11 to reach 95% compliance. And in -- in past reports,
12 the -- the format did not show that percentage, and,
13 so, the parties and the monitoring team discussed
14 that together, and the Monitor agreed, which we
15 thought was very helpful, to start including the
16 tables that would show exactly where the Department
17 is. So that was helpful to us. We can see -- start
18 to see progress -- are we at 60%, 80%, 90% -- and
19 how much farther do we need to go.

20 The second portion that was helpful
21 were those recommendations. Mr. Saucedo referred to
22 the paragraph of the settlement agreement that
23 discusses those recommendations and we appreciated
24 that those have been added in a new format to this
25 report. So that was very helpful. We also

Page 144

1 appreciated Dr. Ginger including a -- a chart like
2 this in his report, that shows the trend over time.
3 This -- this chart is slightly different than the
4 one that Dr. Ginger has. I think the only
5 difference being that, as you'll see in the chart --
6 I'm sorry, the table at the bottom that shows
7 percentages. Dr. Ginger's table -- or bar chart,
8 I'm sorry, also showed percentages. We used
9 paragraph -- numbers of paragraphs. So it shows the
10 same thing but that is a small difference.

11 And this -- this shows the trend over
12 time, which -- I wanted to just point out a couple
13 of things that you can see from this. The --
14 Mr. Saucedo pointed out what I thought was a very
15 important point that I wanted to -- to reiterate,
16 which is this fifth reporting period that you see,
17 from August of 2016 to January of 2017, is really
18 the first -- I think Mr. Saucedo referred to it as
19 the first opportunity to really start to see what
20 the operational compliance looked like. And the
21 reason for that is because, starting in August of
22 2016, that's the first reporting period where the
23 policies were all completely in place and all of the
24 training had been completed.

25 So starting in August, those steps --

Page 145

1 foundational steps were already complete and, for
2 the first time, this reporting period would start to
3 show how is that affecting day-to-day operations out
4 on the street with police officers.

5 So this is where we get to see the
6 first look of what the foundational steps have
7 started to -- to affect. And I also want to say, on
8 behalf of the City and the Department, how much we
9 appreciate the -- the comments here today from the
10 Department of Justice and also from the Monitor
11 that -- that do recognize that -- that effort and
12 that progress.

13 I know that there were comments about
14 the Department of Justice's positive outlook and the
15 positive trend that this shows, and that these types
16 of efforts are clearly not the -- they don't happen
17 by themselves but they are results of sustained
18 effort by the City and the Department which are
19 absolutely happening.

20 Dr. Ginger also -- I appreciated the --
21 the comments that he made that -- that the
22 Department -- I think some of the things he said
23 today, that the Department has not ignored its
24 obligations here, that they are trying to implement
25 them, and they are -- we are just not quite there

Page 146

1 yet, which we acknowledge. We still have work to
2 do.

3 And another thing that Dr. Ginger said
4 that we appreciated was that the Department is doing
5 those things but just needs to grow them. In other
6 words, do them more, do them more consistently,
7 which is what we'll talk about a little bit more, in
8 a few minutes, on the supervisory use of force
9 investigations.

10 And, so, I think that all of those
11 comments do show what this chart shows, which is the
12 trend over time is what we would hope, and what we
13 would expect, after those first four sort of
14 foundational time periods, we're now truly in
15 operational mode. Now we need to build some
16 momentum, which is what we are going to be working
17 on.

18 If we look -- I'd like to turn to what
19 the report really highlights as our next big area
20 to -- to address, which is how supervisors are
21 reviewing uses of force. And this chart is really
22 just to provide a little bit of context for what we
23 are talking about. This is just meant to provide
24 background information and overview. What it is, is
25 a visual representation of the number of calls that

1 the Department would have received during that
2 reporting period, with each figure of a person
3 representing 1,000 calls. And what you -- so the
4 total during that reporting period, as shown here,
5 is over 227,000 calls for service during the
6 reporting period.

7 In that final line, at the far right,
8 what you see is the visual representation of how
9 many of those calls involved some use of force and
10 the number shown here is 248.

11 And, so, while we're talking about how
12 the Department is reviewing uses of force, which is
13 important -- it's absolutely essential to this
14 reform effort that has our focus -- but I thought
15 that it would be important to take a step back and
16 provide the Court and the community with a larger
17 context of where those uses of force fit within the
18 overall work that the Department is -- is doing
19 every day.

20 So we see that during that reporting
21 period, of the over 227,000 calls, approximately 248
22 would have involved some use of force. Those are
23 the ones that are reviewed by a supervisor. You
24 see, in the box on the bottom on the right, are the
25 serious uses of force and that number is 34. So of

Page 148

1 the 227,000 calls for service, approximately 34
2 would have involved a serious use of force, which is
3 defined by the settlement agreement, and that is not
4 reviewed by a supervisor. That goes to the next
5 level, and Internal Affairs and CIRT would be
6 involved and there would be a heightened level of
7 review on what the settlement agreement defines as
8 "serious," and those are nine specified categories
9 of force.

10 So about a 10th of a percent -- a 10th
11 of 1% of the calls for service during that reporting
12 period involved any use of force, which means that
13 over 99% did not. And so that is just background
14 information.

15 So it's of the 248 that the monitoring
16 team would have taken that sample of 16, and -- and,
17 during that review of the sample, it did show that
18 there is significant work left to be done when it
19 comes to how supervisors are reviewing uses of
20 force.

21 A few things that I think it's
22 important for the Court, and -- and the community,
23 to know, that we are working on, even since then,
24 would be that -- as you've stated, this reporting
25 period ended January -- a few things have happened

1 in the interim, or just around that time, that we
2 think will continue to help in this area. There was
3 an updated supervisor training that happened in
4 December of 2016, and, so, just at the end of this
5 reporting period, supervisors were receiving
6 additional training on what they should be looking
7 for when they are conducting these use of force
8 investigations of their officers' work.

9 Part of what that training included was
10 introducing new job aids, which is essentially a --
11 a new type of form or checklist or guide that would
12 help the supervisors as they're doing these reviews,
13 because we're introducing a whole new way of doing
14 these and we want to -- we want to help supervisors
15 understand what to include, what to look for.

16 And part of what we see is that they
17 have -- because they have not been doing them that
18 way in the past, they're still learning how to do
19 them and we acknowledge that. And so I think that,
20 with the introduction of that new checklist form,
21 job aid in December of 2016 -- which was just at
22 the -- almost at the end of this reporting period --
23 so we would not have been able to see yet how that
24 is going to impact the supervisory reviews. So I
25 think that that will show a positive impact as we

Page 150

1 move forward with the next report.

2 The other thing that has happened in
3 the interim time is that there is training going on
4 for officers to act as a refresher course on the
5 original use of force training they received last
6 year.

7 So, as you'll recall, last year,
8 between January and June, all of the officers went
9 through the use of force training. There was --
10 there's a new refresher happening now, between -- it
11 was January to March of 2016, so it's just
12 concluded -- where they -- all of the officers again
13 go through a shorter version of that that's meant to
14 be a refresher. So that also has happened since
15 this reporting period that would not yet be
16 reflected in these results.

17 So the -- the efforts continue. And we
18 acknowledge the work that still needs to be done,
19 but I just wanted to point out those two things
20 specifically for the Court so that you would know
21 what we're doing to try to address some of these
22 issues. Because while -- of the 16 that the
23 monitoring team reviewed, I think that table showed
24 81% of them were within the guidelines of the
25 settlement agreement, that means we haven't hit the

1 95% yet and, so, these are the kinds of steps that
2 we're taking to try to kind of push beyond and we
3 take very seriously the issues that were raised in
4 those.

5 And so one of the things that I think
6 that Ms. Koenigsberg mentioned was Deputy Chief
7 Garcia's new role. He -- he is still a Deputy
8 Chief, the same role -- same title that he had
9 before but he's been given the specific assignment
10 of focusing full-time on the operational compliance
11 under the settlement agreement, which means that the
12 day-to-day things he typically did, someone else
13 will be assigned to do those so that Deputy Chief
14 Garcia can focus full-time on these issues.

15 So the kinds of things like really
16 drilling down on what the monitoring report raises
17 as concerns, figuring out what is at the root of
18 those problems, what do we need to do in terms of
19 our systems to make sure that those are not
20 recurring problems, those are the things that Deputy
21 Chief Garcia will be able to focus on.

22 And we thought that someone at that
23 level with that type of command control over
24 officers in the field and all of their chain of
25 command would be the appropriate person.

Page 152

1 And as you've heard from the Amici over
2 several meetings, Deputy Chief Garcia has -- has
3 worked very, very closely with a number of groups
4 involved in this process and has done really
5 phenomenal work.

6 And so we thought, because of his
7 position and also because of his personal efforts in
8 this case and his history with this case, he would
9 be the appropriate person to do that. So we're
10 excited about his new ability to focus completely on
11 that because we've reassigned his -- his day-to-day
12 responsibilities.

13 So those are -- that's, again, just
14 another thing that we are doing to focus on this
15 area because we recognize that if we can really make
16 progress on the supervisory use of force reviews
17 that that's going to have just a tremendous impact
18 on -- on our progress and our compliance because it
19 will go toward what Dr. Ginger is describing about
20 catching and fixing our own mistakes, which is what
21 our goal is.

22 There was also some discussion of the
23 Force Review Board and Dr. Ginger mentioned that
24 it's still a relatively new process and that the
25 members are still getting their footing.

1 Deputy Chief Garcia is a member of that
2 and, so, I think that helps, as well, that his -- he
3 will be directly involved in the Force Review
4 Board's work and looking at what we can be doing to
5 really focus their efforts, including what to do
6 when you identify a problem, you know, what kinds of
7 recommendations should be going back to -- to other
8 parts of the Department to deal with that.

9 Another thing that I wanted to touch
10 on -- Mr. Saucedo mentioned this, as well -- the
11 outcome assessments in paragraph 298. Dr. Ginger
12 is -- has been working very hard on those and the
13 Department's been working alongside him to make sure
14 he has the data to -- to complete that review. And
15 I think all the parties and the monitoring team are
16 really excited to see the results of that because it
17 will be another way of looking at the efforts.

18 One of the things that Mr. Saucedo said
19 is that -- he mentioned the pieces that have been
20 being put in place in terms of policy, training,
21 recruiting, civilian oversight, and that all of the
22 pieces now just need to start working together and
23 that we are already seeing results. But this
24 outcome assessment, for the first time, is where
25 we're really going to see those quantified.

Page 154

1 And some of that you saw in -- in
2 Ms. Espinoza's presentation in terms of
3 officer-involved shooting numbers or firearm
4 discharge numbers. I have a couple of slides that
5 will just show examples. You know, this does not,
6 at all, try to predict what the outcome assessment
7 will show because it's a different timeframe and
8 stuff like that. But this is just an example of --
9 with the data we have been gathering, we pulled some
10 data just to compare January through March of 2016
11 and compare that to the same three-month period in
12 2017.

13 So the dark green shows the 2016
14 timeframe and the light green shows the 2017 of the
15 same months. And this just shows different
16 categories of force and it compares the numbers of
17 uses of force in those different categories. And,
18 as you can see, most of those show that there are
19 far fewer of those types of uses of force in 2017
20 than in 2016.

21 It compares certain hand techniques,
22 takedowns, ECW usages, so -- this is just meant to
23 be an example to show that we're trying to gather
24 all of our data in one place so that comparisons are
25 more easy to access and make and learn from.

1 And paragraph 287 lays out a whole list
2 of different types of outcomes that the Monitor will
3 be looking at, and this was just meant to show a few
4 examples.

5 We also did a slide that compared those
6 same three months in 2016 and 2017 of incidents with
7 citizen injury. And you see that that -- in those
8 timeframes, it went from 55 incidents in those first
9 three months of 2016 to 22 in the first three months
10 of 2017.

11 Officer injuries, we did a similar
12 comparison of the same time periods and that went
13 from 26 down to 10.

14 So, again, those are just meant to be
15 examples of, you know, the types of things that the
16 outcome assessment will start to look at and -- and
17 we're looking forward to seeing that because I think
18 that, while, you know, the sort of more technical
19 compliance is important, I think that -- when the
20 negotiations happened, I think that the Department
21 of Justice and the City recognized that outcomes was
22 also -- outcomes and results were what we were
23 really looking for and I know that we are very much
24 looking forward to seeing what that -- what that
25 will show.

Page 156

1 I also wanted to talk a little bit
2 about our plan as we go forward. As I mentioned, it
3 was very, very helpful to have this report include
4 the extensive recommendations that it does. Those
5 are throughout the report and, then, Dr. Ginger also
6 put them together in a list at the end.

7 And we have already, at the Department,
8 been taking those and assessing them and, you know,
9 dividing them into subject area so that we can
10 assign them to different people, evaluating them to
11 see where they might overlap or -- or be related,
12 and, then, developing some priority objectives that
13 would relate to each of those recommendations.

14 And one of things that we plan to do
15 is to -- to really use the next several months and
16 our weekly meetings with the parties and the Monitor
17 to keep them informed about what our plans are on
18 implementing those recommendations so that we can
19 get feedback from the parties and feedback from the
20 Monitor about any ideas or suggestions they have as
21 we move forward and, also, to -- to make sure that
22 there's an opportunity for the monitoring team to
23 let us know. And like they have told us all along,
24 they are only recommendations and we recognize that
25 and we have to ultimately decide which to implement

1 or not. But that feedback is incredibly helpful.

2 And so that's what we hope, over the
3 next several months we can do a lot of with the
4 parties and the monitoring team, is making sure that
5 they know how we are implementing those
6 recommendations so that there can be dialogue about
7 that before the next reporting period and before the
8 next report comes out.

9 We -- we prepared a couple of slides,
10 and I won't go through them or read them here,
11 but -- because -- just for the sake of time, and
12 this PowerPoint will also be available publicly.
13 But we've already started to look at which of those
14 recommendations we can implement now. And so we
15 have started working on those and they'll be listed
16 in this PowerPoint that -- that we'll make publicly
17 available.

18 Some of these are very short, or
19 relatively short-term, and so we hope to accomplish
20 as many as we can before this current reporting
21 period ends at the end of July. There are some that
22 will just take longer than that. There's a natural
23 progression that is built into this and we -- we
24 can't do it all overnight, and, so, some of those
25 will just have to continue through the year and they

Page 158

1 will not be done in time to be reported for the next
2 reporting period.

3 As you know, we're in a reporting
4 period, now, that will cover from February through
5 July, and, then, that will be included in the report
6 that comes out in November. And so we'll get as
7 much done on the recommendations as we can before
8 that time period ends, but even if it's not reported
9 in the report that comes out in November, the
10 Department is committed to continuing those efforts
11 and those will have to be reported in a reporting
12 period in 2018. So our -- that's where we are right
13 now. And I think, as the Chief said, the Department
14 is completely committed to this process.

15 And the -- I think that the comments
16 today, from both the Monitor and the Department of
17 Justice, show that, as far as concerns -- and I know
18 you raised this question, too -- where does this
19 idea of deliberate noncompliance come from. I think
20 from the comments here today, it's very clear that
21 it certainly does not relate to commitment to the
22 overall process or any unwillingness in that regard,
23 at all. The -- the trend is -- is clear, from
24 the -- the compliance findings over time, and there
25 were two issues that came up that were very specific

1 issues, the neck holds and the -- the Special Order.

2 And I think that the comments today helped to put in
3 context, I believe, that concern of deliberate
4 noncompliance, that there were issues where there
5 had been a lot of discussion back and forth,
6 particularly on the neck holds, and so I don't think
7 that, after today, there -- there does not seem to
8 be any question or concern about whether the overall
9 commitment is -- is strong, because it is and I
10 think that -- that Dr. Ginger and the Department of
11 Justice said that. You heard that from Mr. D'Amato,
12 as well.

13 On those two particular issues, I think
14 that Mr. Saucedo did an excellent job of describing
15 the neck holds discussion that had happened, and
16 Chief Eden touched on that, as well, that the
17 definition of "neck holds" has never changed. It's
18 been in the settlement agreement from the beginning
19 and our policy has also prohibited it that entire
20 time. So we have never tried to allow neck holds by
21 policy. That has never happened.

22 Instead, there was a lot of discussion
23 about when will certain contact cross the line into
24 actually qualifying as a neck hold, constituting a
25 neck hold. And so that was the discussion that took

Page 160

1 place.

2 And so we -- we don't believe that we
3 were deliberately noncompliant on that issue, but I
4 think that -- that the conversation here today has
5 shown that there was -- there was just a lot of
6 discussion on it. And -- but what's very clear is
7 that the policy has always prohibited it. We've
8 never tried to -- to allow it by policy. And I
9 think that, on that point, Mr. Saucedo said that --
10 I'll try to find his -- I think he said that he had
11 not seen that the Department had, in any way, tried
12 to back away from their commitment to prohibit them.

13 So we -- we have certainly made every
14 effort to comply on that issue. That policy does
15 still need to be clarified so that it's clearer when
16 certain contact with the neck might cross over into
17 being a neck hold.

18 I was also able to get some information
19 on the Special Order, and you -- you raised a very
20 direct question about whether or not the Department
21 had ever denied that it had issued it. And so I
22 wanted to address that very directly. And I was
23 able to find the -- the e-mails where the request
24 came in and it looks like, from the outset, there
25 was confusion about what the monitoring team was

1 asking for because their -- their request came in on
2 February 24th and it asked Director Slausen to
3 "Please forward copy of Special Order 6-75." And
4 the Special Order that deals with the video review
5 is Special Order 16-73.

6 And, so, it -- it was a different
7 number, which I think was just a mistake in the
8 request, but that did cause confusion when the
9 Department was trying to find it because they were
10 looking for a 6-75 when, as it turns out, what the
11 monitoring team wanted was 16-73. So that took some
12 time to -- to determine.

13 We -- we first sent a Special Order
14 16-75, which dealt with a different topic, and we
15 just couldn't tell yet what they were asking for.
16 And, then, on -- three days later, on February 27th,
17 the monitoring team clarified their request and just
18 said, "Please just send us all Special Orders you've
19 issued that relate to the Settlement Agreement."
20 And, so, on March 2nd, we sent all the Special
21 Orders for a certain time period just so they would
22 have a complete set.

23 So it looks like within approximately a
24 week of the request, all Special Orders were
25 provided and if there was any confusion, it was just

Page 162

1 because there was some mis-numbering that I'm sure
2 was inadvertent. And, so, that was -- I do not
3 believe that there was ever a denial that the
4 Special Order had been issued, I think it was some
5 confusion over the numbering. So I think that that
6 answers the Court's question on that.

7 THE COURT: It does. Thank you.

8 MS. HERNANDEZ: I don't have any other
9 specific comments and would answer any questions
10 that the Court has.

11 THE COURT: When Mr. Cubra was here, he
12 raised a topic that we've heard about, now, a couple
13 of times and that was the order on the use of force
14 utilization. It was -- it was being
15 underutilized -- the use of force was being
16 underutilized. And we talked about this the last
17 time, and I asked who had authored that and when.
18 And Mr. Cubra said we still didn't know. I don't
19 recall getting an answer to that, but where are we
20 with that?

21 MS. HERNANDEZ: On the answer to that
22 question specifically?

23 THE COURT: Yes, ma'am.

24 MS. HERNANDEZ: Your Honor, that report, I
25 believe -- or that memo that went out to officers

1 was June of 2016. And it's my understanding that it
2 was authored by the sergeant who was over CIRT at
3 that time, and it was authored based on some cases,
4 that the Force Review Board had reviewed, that found
5 that, in some cases, a higher level of force ended
6 up being necessary in the end because the police
7 officer had not used a lower level of force early on
8 that might have contained the situation more quickly
9 and, so, any hesitating to use any force at all,
10 that escalated the situation and more force was
11 needed later.

12 So that was the purpose of the memo.
13 It was trying to remind officers, use appropriate
14 levels of force from the beginning of an
15 interaction. That was the purpose of the memo.

16 There were some concerns by Amici that
17 the -- that it was encouraging officers to use more
18 force, and that -- that was never the intent. The
19 intent was just to tell them, don't hesitate to use
20 appropriate levels of force when needed for your
21 safety and for the safety of the -- the person that
22 you're interacting with.

23 The Department decided that the -- the
24 best way to address that issue, going forward, was
25 through its regular use of force training,

Page 164

1 refreshers on use of force training. So there has
2 not been a specific second memo that went out to
3 follow up on it. It has been done through their
4 regular trainings about what the appropriate levels
5 of force should be in different situations.

6 THE COURT: Thank you. Mr. Harness talked
7 about the Chief responding to recommendations from
8 POB and that's been one of those issues that has
9 lingered. And he said, within the last 60 days --
10 which is not in the time period we're talking
11 about -- that the Chief had begun to respond. Flesh
12 that out for me a little bit, please.

13 MS. HERNANDEZ: I'd be glad to do that,
14 Your Honor. There -- this has been one of those
15 issues where there has definitely been a lot of
16 dialogue back and forth to try to get all of the
17 parties on the same page about what -- what each of
18 their responsibilities are. And that's never been
19 because of an unwillingness on the part of APD. APD
20 has always wanted to comply with these but I think
21 there were legitimate questions about when those
22 letters were supposed to be sent and what levels of
23 detail they needed to include.

24 And the -- the reason for that
25 confusion and the need for the discussion was

1 because there's -- there are paragraphs of the
2 Settlement Agreement that deal with this issue.
3 There's also an ordinance passed by the City Council
4 that establishes the Police Oversight Board and had
5 some overlapping, but not identical, obligations.
6 And then -- and so -- and then there were also
7 different categories, such as policy
8 recommendations, recommendations for discipline,
9 and -- there's one other category -- it might be --
10 there's another category of Internal Affair
11 investigations where the POB would be weighing in.

12 And, so, between those three
13 categories, it was not clear when the Chief was
14 supposed to send these letters because there is one
15 of those categories where the ordinance does not
16 require it and I don't think the Settlement
17 Agreement does, either, but two other categories, it
18 does. So it was -- it was genuinely a
19 misunderstanding among the parties about whether
20 those letters had to go in all cases.

21 And, also, there was an issue where --
22 because the Department was actually not disagreeing
23 with a lot of the different recommendations, letters
24 were not going in those cases because the Department
25 thought, "If we're not disagreeing with the

Page 166

1 recommendation, we're not going to send a letter,"
2 but there were certain of those cases where the
3 Police Oversight Board was expecting some additional
4 explanation and that had not been occurring yet.

5 And so those were some of the issues
6 that needed to be fleshed out. But we were always
7 willing to discuss it and I think we've now reached
8 a point where there's a common understanding about
9 what -- what types of letters require a response and
10 when. And, then, the -- the new issue became the
11 level of detail, so we also reached a recent
12 agreement that the Chief would begin putting
13 additional detail.

14 There was some concern initially,
15 because these are personnel matters, that -- not all
16 of the information is -- is always publicly produced
17 in those because it's in the personnel file and has
18 to do with evaluation and discipline, that there was
19 still some concern about what level of detail was
20 appropriate. And, so, there have been discussions
21 about that and, I think, a recent agreement on that
22 level of detail, as well.

23 THE COURT: Thank you. And I think the
24 last of my questions related to a comment from
25 Mr. Miera from MHRAC about the use of on-body

1 cameras in the interactions with folks that he
2 represents. Where are we with that?

3 MS. HERNANDEZ: Your Honor, I'm looking to
4 Ms. Jacobi because she's been much more involved in
5 that process. If it's acceptable to you, I can ask
6 her to answer that question because I know she's
7 been directly involved in it, but it's my
8 understanding that policy has been revised, with
9 input from MHRAC and other groups, and is now
10 circulating with the parties.

11 THE COURT: Ms. Jacobi, I'm glad to hear
12 from you if you have something to add other than
13 that.

14 MS. JACOBI: Thank you, Your Honor. That
15 is essentially correct. Earlier this year, APD and
16 the parties met with several representatives from
17 MHRAC to work on language that has been
18 incorporated. And I -- I recall that it was
19 approved by the individuals at MHRAC who
20 participated in those talks. That policy, right
21 now, is just waiting final approval on how the
22 supervisors do their monthly reviews of videos,
23 because that -- the same policy covers both issues,
24 and, so, it'll be rolled out as soon as that issue
25 is concluded.

Page 168

1 THE COURT: Good. Thanks. Ms. Hernandez,
2 I didn't have any other questions. I -- just a
3 little shout out to Ms. Espinoza and her PowerPoint.
4 Mr. Cubra suggested that the default in dealing with
5 folks in mental health crisis was jail, and your --
6 the first, I think, of your slides suggested
7 otherwise and I thought that was effectively done.
8 Anything else from the City?

9 MS. HERNANDEZ: Your Honor, just one point
10 to address a question you had raised earlier about
11 the -- the Special Order on the review of videos.
12 And I just did want to make clear to the Court that
13 the Settlement Agreement itself -- and this is in
14 paragraph -- I'm sorry, 220(G) -- it only says that
15 supervisors are to review recordings regularly. So
16 it doesn't specify the number of the reviews and,
17 so, the Special Order that went out did not
18 contradict the Settlement Agreement, it -- it did
19 differ from the policy.

20 And so that is the part where we
21 have -- as you've heard already, it was a workload
22 issue because what was in the policy proved to be
23 completely unworkable for the sergeants, and that
24 has been discussed between the parties and the
25 monitoring team at length. But I did want to make

1 sure that you knew that it did not contradict the
2 Settlement Agreement.

3 And we've also worked together with the
4 Monitor and the other parties to talk about what
5 kind of process should we use to get an expedited
6 review of Special Orders like that, that -- so that
7 they don't have to go through the entire policy
8 process that can take many months, because it was a
9 very true operational issue that would have really
10 impeded the sergeants' ability to perform all of
11 their other supervisory responsibilities.

12 But the main point I wanted to make
13 just was that the Settlement Agreement did not have
14 anything that would be contradicted by that Special
15 Order.

16 THE COURT: So are you taking the
17 position, then, that if it doesn't contradict
18 something in the CASA but it does go contrary to
19 something that was in policy that everyone's agreed
20 to, that the Monitor doesn't need to be alerted to
21 it?

22 MS. HERNANDEZ: No -- no, Your Honor.
23 That would not be our position. This -- this
24 Special Order should have been discussed with the
25 Monitor and the parties before it was issued and we

Page 170

1 now have a process in place so that that does not
2 happen again.

3 THE COURT: That's what I wondered. Thank
4 you. Thank you very much. Dr. Ginger, this is your
5 opportunity to respond to things you've heard
6 throughout the day.

7 MR. GINGER: Pardon me, Your Honor, I'm
8 down in the back.

9 THE COURT: You looked, as you got up, as
10 I feel. I'm having some back issues myself. So
11 I'll stand while you take the podium.

12 MR. GINGER: I apologize for my periodic
13 absences, your Honor, but I had to get up and walk
14 around once in a while -- back in the emergency
15 room. Obviously, we will stand by our report. I
16 think you heard a lot of good information this
17 afternoon that points us on our way forward. That's
18 excellent.

19 You know, we had the issue with
20 Special -- with the Special Order. We tried, as
21 best we could, to track it down. Proved to no avail
22 and we'll see where we go from here. But the
23 information in the report is accurate for the
24 reporting time.

25 THE COURT: All right. So, actually,

1 during one of your absences, I touched on this
2 deliberate indifference and deliberate -- I don't
3 know -- you used the adjective "deliberate" twice --
4 noncompliance -- and you didn't ever go there in
5 your remarks this morning -- but I actually asked
6 Mr. Saucedo about that because he didn't, either.
7 One of the Amici did, I think.

8 MR. GINGER: Right.

9 THE COURT: But you are -- well, after
10 reading this report, I can't say you're a man of few
11 words, but -- but you have always chosen your words
12 carefully.

13 MR. GINGER: Yes, sir.

14 THE COURT: And, so, that -- that phrasing
15 jumped out at me, as it did others, because it -- it
16 speaks to an attitude, and I -- I -- I can't have
17 that attitude. This process can't bear that
18 attitude. And so I've heard people address it
19 today, but do you stand by that and, if you do, why
20 didn't we talk about it this morning?

21 MR. GINGER: I do stand by it, Your Honor.
22 The follow-up on my part is to find out if they've
23 stopped doing what they had been doing. And if
24 that's the case, then it looks like we've worked
25 that out, that it's not going to happen anymore.

Page 172

1 I reserved that phraseology for things
2 that were either highly critical or had been asked
3 for by the monitoring team over a period of time and
4 never showed up. That Special Order 75 is a
5 critical group. There are other things that we had
6 to remind APD about on three occasions and never
7 happened. That was the hack to the website to be
8 able to file anonymous complaints that -- that is
9 required by -- to be serviced by the CASA.

10 So I was very careful in my language.
11 It sounds to me like we're starting to fix most of
12 those problems and that's great. If that's the
13 case, they're fixed and I'll report them as such.

14 As far as I'm concerned -- as I stand
15 here today, I'm still concerned about asking several
16 times and not getting responses. That was hooked
17 in, if you recall, to the -- one of those
18 noncompliance findings was hooked into the
19 deliberate shutdown of the IRS system without notice
20 to the monitoring team, which we also viewed as
21 highly critical. So I'm concerned about it. We'll
22 continue to monitor it and I'll continue to report
23 it.

24 I hope it's over with. I hope we don't
25 have to remind the City repeatedly to get things

1 done that are required by the CASA. That will be a
2 good thing. But as it stood the day that report was
3 written, those things were accurate.

4 THE COURT: As it relates specifically to
5 the Special Order, you heard Ms. Hernandez address
6 that today and she said it was a function of
7 miscommunication, perhaps that initiated with you,
8 you cited a wrong number or something and -- in an
9 e-mail. That's what she said just a moment ago.

10 MR. GINGER: Right.

11 THE COURT: And that could well explain
12 them not responding immediately, or not responding
13 over time, as they continued to track down this
14 Special Order. Are you -- given that explanation,
15 are you still settled on this -- this deliberate
16 issue, or is it --

17 MR. GINGER: I'll look into it, Your
18 Honor. Obviously, I will. That's my job. My
19 people are fairly well trained. All of these people
20 have been through this before. They know what to
21 ask for and how to ask for it. We'll look into it.
22 I'm not convinced the explanation is accurate, but I
23 don't have the facts on the ground right now to make
24 it a -- a determination one way or another. What we
25 do know is that we specifically asked, not just by

Page 174

1 category, but by -- or by number, but by category
2 and we were provided information that was incorrect.
3 So we'll -- we'll have to follow up on it.

4 THE COURT: All right. And I'd appreciate
5 being in that loop when you follow up.

6 MR. GINGER: Yes, sir.

7 THE COURT: Remind me when the outcome
8 assessments are due, please.

9 MR. GINGER: The draft should be at the
10 City -- 4 June, I believe is the day. The week of
11 4 June.

12 THE COURT: And then final dissemination?

13 MR. GINGER: It depends on how long the
14 City thinks it needs to go through and comment, and
15 we'll revise accordingly and get it out. It's a top
16 priority right now.

17 THE COURT: All right. Anything else,
18 Dr. Ginger?

19 MR. GINGER: No, sir.

20 THE COURT: Mr. Saucedo, you had something
21 else?

22 MR. SAUCEDO: Yes, Your Honor. We
23 appreciate Ms. Hernandez's offer to keep the parties
24 informed about the action steps that they're taking
25 going forward during our weekly and our monthly

1 meetings. We would ask, Your Honor, that the United
2 States have an opportunity to respond to the written
3 action plan that the Court has requested -- or
4 instructed the parties to submit within 30 days.

5 I -- I would ask that the United States
6 have an opportunity to respond if necessary, given
7 that we'll have some ongoing discussion about it on
8 the front end. But, if necessary, that the United
9 States have 15 days to respond to that action plan.
10 And I'm sure the Amici may appreciate, or would
11 appreciate, also having that opportunity, as well.

12 THE COURT: That -- that's probably a good
13 process. Let's do that. So, actually, get your
14 draft of your response and action plan to the rest
15 of the parties within 30 days and, then, at 45 days,
16 I'll expect something in writing.

17 MR. SAUCEDO: Thank you, Your Honor.

18 THE COURT: Anything else, then, from the
19 parties? Well, there's someone raising their hand
20 in the gallery. Yes, ma'am.

21 MS. BAUTISTA: Yes, sir. My name is Maria
22 Bautista. We filed an Amici --

23 THE COURT: Ma'am, come forward, please.
24 The court reporter can't hear you. Thank you. Yes,
25 ma'am.

Page 176

1 MS. BAUTISTA: Your Honor, my name is
2 Maria Bautista -- B-A-U-T-I-S-T-A. Your Honor,
3 today, I stand before you, sir, to say --

4 THE COURT: Let me stop you. Let me
5 interrupt.

6 MS. BAUTISTA: Yes, sir.

7 THE COURT: I -- you said that you had
8 submitted an Amici letter. There is a process in
9 place where Amici presents letters, the parties
10 respond, and -- and time is set aside at these
11 meetings for that -- for that purpose.

12 I don't know about your submission of a
13 letter. I don't know whether you've abided by that
14 process or not. And my concern is that the process
15 becomes pretty open-ended if I just open the -- the
16 room up to comment and it becomes a City Council
17 meeting instead of --

18 MS. BAUTISTA: Yes, sir, and I'm not
19 trying to do that.

20 THE COURT: Did you abide by the process,
21 that's what I want to know?

22 MS. BAUTISTA: Sir, the -- may I have a
23 moment to say, please, sir, that -- we did file an
24 Amici brief and that our attorneys did follow the
25 process, and that the only thing that I wanted to

1 say to you, sir, was that Mr. D'Amato today
2 insinuated that we were not here and I wanted -- he
3 said the community -- the Amici are not here and we
4 are. Sir, we've been here since 8:30 this morning.

5 Our attorney, unfortunately, was not
6 able to be here. He's the dean of the law school
7 and we did have appropriate representation on behalf
8 of our Amici, which is a large community group, and
9 we were not able to get ahold of the Court in time
10 to be able to say we have another attorney who could
11 speak on behalf of that particular group of Amici,
12 just like APD Forward was able to speak, but we were
13 not able to because we're just lay people and I
14 wasn't sure how I would get that request to you.

15 And when our Amici group was not called
16 and then I heard Mr. D'Amato say that the
17 community's not here and not interested, I -- I just
18 wanted to say that we are here and -- and we --

19 THE COURT: Who are you representing?

20 MS. BAUTISTA: I'm with New Mexico OLOC,
21 but our Amici group was several community
22 organizations; Los Ranchos, the New Mexico
23 Association of OLOC with LULAC, with the Martin
24 Luther King, Jr., Association. There was about 40
25 of us that filed that Amici and today's the first

Page 178

1 day that our attorneys, who represented us, have not
2 been able to be here; Leon Howard, Dean Mathewson
3 from the Law School, and Mr. Steve Trujillo.

4 All I wanted to say was, to let you
5 know that we are here and I'm sorry if we missed
6 some document we had to present to you in -- because
7 we -- we found out late that they weren't going to
8 be able to be here.

9 And I wouldn't have even approached the
10 Court, Your Honor, except that Mr. D'Amato said,
11 "Well, it's obvious that the community isn't here,"
12 and that's not the case at all. We're just lay
13 people. We've sat here all day and we did have a
14 representative to speak for us but when the name
15 wasn't called -- and, then, Mr. D'Amato says, "Well
16 they're not even here and they're not interested" --
17 I think everybody here is interested, and I think we
18 all are community, and I think that that's not an
19 appropriate representation. And I just appreciate
20 that our -- our attorney was here to be able to fill
21 in but we didn't hear the name. We -- we didn't
22 know what to do.

23 THE COURT: Ms. Bautista, I'm glad I've
24 heard from you.

25 MS. BAUTISTA: Thank you.

1 THE COURT: And, frankly, if you're
2 represented by Dean Mathewson, he understands the
3 process. He has been a part of this process early
4 on. And you can go to the DOJ website or the
5 Albuquerque -- City of Albuquerque website and
6 figure out how it is exactly you're supposed to
7 present your -- your letter, engage the parties
8 beforehand, and then -- and then get on the agenda
9 that way.

10 And, frankly, I didn't hear Mr. D'Amato
11 say whatever -- what you thought you heard. I -- I
12 didn't understand him to be disparaging about a lack
13 of interest on the -- on the folks from the
14 community.

15 On the other hand, he commended many of
16 those volunteers that have been there. So I
17 appreciate your comment and -- and, please, just
18 follow that normal process -- that process we've
19 laid out and all agreed to and, if -- if need be,
20 we'll hear from you next time.

21 MS. BAUTISTA: I appreciate it very much.
22 Thank you.

23 THE COURT: Yes, ma'am?

24 MS. MARTINEZ: Your Honor. When the
25 parties notified Counsel for the Amici process the

Page 180

1 Court sets in place to participate in these public
2 hearings, we provide that notice to the attorneys
3 and not to the actual Amici.

4 I am aware that Mathewson and a couple
5 of other attorneys who represent the coalition of
6 organizations that Ms. Bautista belongs to did
7 receive that e-mail. But, going forward, what I
8 will endeavor to do is to ensure that we also reach
9 out to some of the representatives from these
10 organizations so that if they do want to be in touch
11 with their counsel, they have that opportunity and
12 are able to participate in the process as the Amici
13 who did today.

14 THE COURT: Thank you. I think that will
15 facilitate the process and facilitate the
16 community's involvement. Thank you very much. Ms.
17 Hernandez?

18 MS. HERNANDEZ: Your Honor, I'm sorry.
19 You asked to be kept in the loop as we work together
20 with Dr. Ginger on clarifying what had occurred with
21 the request for that Special Order. Do you want
22 that submitted at a certain time in a certain way,
23 or with 30-day action plan? I wanted to make sure
24 that I kept you in the loop appropriately.

25 THE COURT: You know what, it's fine to

1 just include it in your letter that you're going to
2 get to me within the 30 days. All right. Thanks.

3 You know what, I'm -- the graphic is
4 still up from Ms. Hernandez's presentation, and that
5 shows progress and it doesn't show the progress
6 hoped. We talked, early on, about a two-year
7 schedule and -- and understood at the time that that
8 was an aggressive sort of position to take, and
9 we've altered our expectation some in the meantime.

10 I -- I appreciate the airing of the
11 concerns that people had relative to the IMR-5
12 today. I -- I heard some responsible sort of
13 feedback and -- and responses. I'm -- I continue to
14 be optimistic because that's my nature, but someone
15 said, along the way today, "Now" -- "now the rubber
16 really hits the road and now is the acid test."
17 We've got policy. We struggled through that process
18 and we got there. And we've trained, and we had to
19 expedite the training but we got there. And so,
20 now, it's implementation, now it's -- it's
21 compliance on the ground, and I'm -- I'm encouraged
22 by the numbers. Shootings are down and use of force
23 is down.

24 And, yes, it's true the use of force
25 is -- is miniscule in terms of the number of calls

Page 182

1 that the APD gets every year, I understand that. As
2 a percentage matter, though, it occurs to me that it
3 was a very insignificant percentage matter before
4 DOJ got involved, it was just at an unacceptable
5 level.

6 And so we are -- we're -- we're all
7 pulling in the same direction, that's what everyone
8 says. I will continue to believe that until I see
9 proof otherwise. And, in the meantime, thanks
10 everyone, for their efforts. Thanks for the
11 volunteers. Thanks to those from the Department of
12 Justice, the City, APOA, Dr. Ginger. Of course,
13 I -- I appreciate everyone's efforts, and be careful
14 out there and I'll talk to you all soon. Thank you,
15 we're adjourned.

16 (Note: Court concluded at 2:53 p.m.)

17

18

19

20

21

22

23

24

25

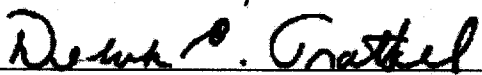
1 STATE OF NEW MEXICO)

) ss

2 COUNTY OF BERNALILLO)

3
4 I, DEBORAH E. TRATTEL, Certified Court
5 Reporter for the State of New Mexico, hereby certify
6 that I reported, to the best of my ability, the
7 proceedings, 14-cv-1025 RB/SMV that pages numbered
8 1-79, inclusive, are a true and correct typewritten
9 transcript through Computer-Aided Transcription;
10 that on the date I reported these proceedings, I was
11 a New Mexico Certified Court Reporter.


12 Dated at Albuquerque, New Mexico, this
13 19th of May, 2017.

14
15
16 
17 DEBORAH E. TRATTEL, NM CCR CA CCR
18 Certified Court Reporter #153
19 License Expires: 12-31-17
20
21
22
23
24
25

1 STATE OF NEW MEXICO)
) ss
2 COUNTY OF BERNALILLO)
3

4 I, KENDRA K. SUTTON, Certified Court
5 Reporter for the State of New Mexico, hereby certify
6 that I reported, to the best of my ability, the
7 proceedings, 14-cv-1025 RB/SMV that pages numbered
8 1-79, inclusive, are a true and correct typewritten
9 transcript through Computer-Aided Transcription;
10 that on the date I reported these proceedings, I was
11 a New Mexico Certified Court Reporter.

12 Dated at Albuquerque, New Mexico, this
13 19th of May, 2017.
14

15
16 
KENDRA K. SUTTON, CSR, RPR
Expires: December 31, 2017
17
18
19
20
21
22
23
24
25

